The Rt. Hon. Lord Davey, Lord of Appeal.

Chairman of the Executive Committee of the Society.

JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY

BY

JOHN MACDONELL, Esq., C.B., LL.D.

AND

EDWARD MANSON, Esq.

"Δεῖ . . . ἐπισκοπεῖν καὶ τὰς ἄλλας πόλεις ἁπάσας καὶ τὰς νῦν λεγομένας καὶ τὰς εὐνομουμένας, ἵνα τὸ τί καλῶς ἔχον ὀφθῇ καὶ τὸ συμφέρον."—ARIST. *Pol.* II. 1.

NEW SERIES. 1900. No. 3.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1900.

JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY

BY

JOHN MACDONELL, Esq., C.B., LL.D.

AND

EDWARD MANSON, Esq.

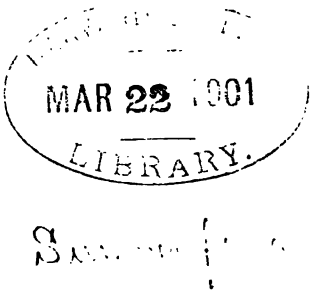
"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—ARIST. *Pol.* II. 1.

NEW SERIES. 1900. No. 3.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

1900.



PRINTED BY
HAZELL, WATSON, AND VINEY, LD.,
LONDON AND AYLESBURY.

CONTENTS OF No. 3, 1900.

THE SOCIETY OF COMPARATIVE LEGISLATION.

PRESIDENT:

THE RT. HON. THE EARL OF ROSEBERY, K.G., K.T.

CHAIRMAN OF THE EXECUTIVE COMMITTEE:

THE RT. HON. LORD DAVEY.

VICE-CHAIRMAN:

SIR COURTENAY ILBERT, K.C.S.I.

COUNCIL:

The Rt. Hon. Lord Alverstone, G.C.M.G., the Lord Chief Justice of England.

Sir W. R. Anson, Bart., M.P., Warden of All Souls' College, Oxford.

The Rt. Hon. the Duke of Argyll, K.T., G.C.M.G.

The Rt. Hon. Lord Ashbourne, Lord Chancellor of Ireland.

The Rt. Hon. H. H. Asquith, Q.C., M.P.

Thomas Barclay, Esq.

H. C. Beeton, Esq., Agent-General for British Columbia.

The Hon. E. Blake, Q.C., M.P.

The Rt. Hon. James Bryce, M.P.

The Rt. Hon. Earl Carrington, G.C.M.G.

The Hon. Sir J. W. Carrington, C.M.G., D.C.L., L.L.D., Chief Justice Supreme Court of Hong-Kong.

M. D. Chalmers, Esq., C.S.I., Assistant Parliamentary Counsel to the Treasury.

His Excellency the Hon. J. Choate, United States Ambassador at the Court of St. James's.

Arthur Cohen, Esq., Q.C.

Baron de Courcel, formerly French Ambassador at the Court of St. James's.

H. Bertram Cox, Esq., Legal Assistant Under Secretary, Colonial Office.

The Rt. Hon. Viscount Cross, G.C.B., G.C.S.I.

The Rt. Hon. Lord Davey.

W. E. Davidson, Esq., C.B., Q.C., Legal Adviser to the Foreign Office.

The Rt. Hon. the Earl of Derby, K.G., G.C.B.

A. V. Dicey, Esq., Q.C., Vinerian Professor of English Law, Oxford.

The Rt. Hon. the Marquis of Dufferin and Ava, G.C.B., K.P.
Sir R. B. Finlay, Q.C., Attorney-General.
C. J. Follett, Esq., C.B., Solicitor to the Commissioners of Customs.
The Rt. Hon. Sir Edward Fry, formerly Lord Justice of Appeal.
Sir James Garrick, K.C.M.G., formerly Agent-General for Queensland.
The Hon. Duncan Gillies, formerly Agent-General for Victoria.
R. B. Haldane, Esq., Q.C., M.P.
The Rt. Hon. the Earl of Halsbury, the Lord Chancellor.
Sir Robert Herbert, G.C.B., formerly Permanent Under Secretary of State for the Colonies.
The Rt. Hon. Lord Hobhouse, K.C.S.I.
Professor T. E. Holland, Professor of International Law, Oxford.
Sir Courtenay Ilbert, K.C.S.I., Parliamentary Counsel to the Treasury.
A. Taylor Innes, Esq.
The Rt. Hon. Lord James of Hereford.
Professor Jenks, Reader in English Law, University of Oxford.
The Hon. Mr. Justice Kennedy.
Courtney Kenny, Esq., LL.D.
The Rt. Hon. Viscount Knutsford, G.C.M.G.
Sir Chandos Leigh, K.C.B., Q.C., Counsel to the Speaker.
The Rt. Hon. Lord Lindley, Lord of Appeal.
Lord Lingen, K.C.B.
John Macdonell, Esq., C.B., LL.D., Master of the Supreme Court.
Sir K. Muir Mackenzie, K.C.B., Q.C., Permanent Secretary to the Lord Chancellor.
Professor F. W. Maitland, LL.D., D.C.L., Downing Professor of Law, Cambridge.
The Hon. Mr. Justice Mathew.
The Rt. Hon. the Earl of Morley, Chairman of Committees, House of Lords.
Sir Francis Mowatt, G.C.B., Permanent Secretary to the Treasury.
The Rt. Hon. Viscount Peel, late Speaker of the House of Commons.
Sir Westby Perceval, K.C.M.G., Agent-General for Tasmania.
T. D. Pigott, Esq., C.B., Controller of the Stationery Office.
Sir Frederick Pollock, Bart., Corpus Professor of Comparative Jurisprudence, Oxford.
T. Raleigh, Esq., Legal Member of the Council of the Viceroy of India.
Lord Reay, G.C.S.I., formerly Under Secretary of State for India.
Sir Robert Reid, G.C.M.G., Q.C., M.P.
The Rt. Hon. Cecil Rhodes, formerly Prime Minister of Cape Colony.
The Rt. Hon. the Earl of Rosebery, K.G., K.T., *President.*
Whitley Stokes, Esq., C.S.I., formerly Legal Member of the Council of the Viceroy of India.
Sir Charles Tupper, Bart., G.C.M.G., formerly High Commissioner for Canada.
Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.
Professor Westlake, Q.C., Professor of International Law, Cambridge.
E. H. Whittuck, Esq.
Sir Arthur Wilson, K.C.I.E., Legal Adviser to the India Office.
H. F. Wilson, Esq., Legal Assistant, Colonial Office.
The Hon. Mr. Justice Wright.
Sir Henry Wrixon, K.C.M.G.

EXECUTIVE COMMITTEE:

Thomas Barclay, Esq.
The Hon. E. Blake, Q.C., M.P.
The Rt. Hon. James Bryce, M.P.
Mackenzie Dalzell Chalmers, Esq., C.S.I.
Arthur Cohen, Esq., Q.C.
H. Bertram Cox, Esq.
Montague Crackanthorpe, Esq., Q.C.
W. F. Craies, Esq.
Newton Crane, Esq.
The Rt. Hon. Lord Davey, *Chairman.*
W. E. Davidson, Esq., C.B., Q.C.
Sir James Garrick, K.C.M.G.
Albert Gray, Esq.
R. B. Haldane, Esq., Q.C.
John Hunter, Esq.
Sir Courtenay Ilbert, K.C.S.I., *Vice-Chairman.*
The Rt. Hon. Lord James of Hereford.
John Macdonell, Esq., C.B., LL.D.
Sir Kenneth Muir Mackenzie, K.C.B., Q.C.
Professor F. W. Maitland, LL.D., D.C.L.
Lord Reay, G.C.S.I.
J. A. Simon, Esq.
Whitley Stokes, Esq., C.S.I.
Sir Charles Tupper, Bart., G.C.M.G.
Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.
Professor Westlake, Q.C.
H. F. Wilson, Esq.

HONORARY SECRETARY:

EDWARD MANSON, ESQ., 8, Old Square, Lincoln's Inn.

EDITORS OF THE JOURNAL:

JOHN MACDONELL, ESQ., C.B., LL.D.
EDWARD MANSON, ESQ.

LORD RUSSELL OF KILLOWEN.

[*Contributed by* JOSEPH WALTON, ESQ., Q.C.]

WITHIN two short years England has lost the services of two great judges, each unsurpassed within the sphere of his own peculiar genius. Lord Herschell and Lord Russell were juniors together and were leaders together on the Northern Circuit; one was Lord Chancellor, and the other Attorney-General in the last Administration of Mr. Gladstone, and in the case of each death came suddenly, carrying away its victim apparently in the maturity of his strength and in full enjoyment of his remarkable powers. It is probably only those whose lives are spent in the courts of law and in the business of litigation who adequately realise the importance and value to the public service of judges such as Lord Herschell and Lord Russell of Killowen.

It is about thirty-two years since the writer of these lines became a pupil of Mr. Charles Russell, then a junior on the Northern Circuit, at 3, Brick Court, in the Middle Temple. It has been said in notices which have appeared since his death that Lord Russell was for some time a member of the "local Bar" at Liverpool. This is a mistake. He attended the Liverpool Sessions and the Court of Passage or Mayor's Court at Liverpool; he had friends at Liverpool, and it was there that his great qualities were first recognised and appreciated. But his home from the time of his call to the Bar until his death was in London. In those early days the Court of Passage was a popular and important Court, and its assessor or judge was one of the leaders of the English Bar, an eminent commercial lawyer and very powerful advocate—Mr. Edward James, Q.C. It was, as it still is, a Court attended by junior barristers only, and afforded an excellent training in the art of examining and cross-examining witnesses, and of conducting business in Court. It was in the Court of Passage that Mr. Brett gained the experience and reputation which made him afterwards leader of the of the Northern Circuit, Solicitor-General, and in the end Master of the Rolls, under the title of Lord Esher. And when the name of Charles Russell was still almost unknown in London his singular power and skill as an advocate were making their mark—and a very deep and durable mark—in Liverpool. However, in the later 'sixties, Mr. Charles Russell

was not only the leader of the Court of Passage, he was one of the busier juniors of the Northern Circuit and had a considerable practice in London.

The impressive personality of Lord Russell and the extraordinary power which he threw into the work which he had in hand, whatever it might be, have sometimes given rise to one-sided, and in that respect false, ideas of his character and genius. It was often said that he was a great advocate but not a lawyer. Those who said this knew him as the leader in *causes célèbres* in London, but did not know, or forgot, that for years he had been the leader of the Northern Circuit, engaged on one side or the other in every case of any importance that was tried at Liverpool or Manchester. As a mere lawyer he was excelled by Mellish, and perhaps by other members of his circuit, but Lord Russell, whether at the Bar or on the Bench, in dealing with questions of law exhibited always not only sufficient learning and a large experience, but beyond this a very characteristic determination to reject irrelevancies, to understand very plainly as a case proceeded each position that was taken up on the one side and on the other, to disentangle the issues of fact and the questions of law, and to arrive at a clear apprehension of the principles by which such questions should be governed. And, although Lord Russell was essentially a man of action and not of books, he always showed much interest in such subjects as Jurisprudence and International Law, and attached, as some thought, an almost exaggerated importance to the formal teaching of law, to lectures, and examinations as a practical preparation for the legal profession. It is, however, perfectly true that even from the early days when he was practising as a junior in the Passage Court the cases which awakened his liveliest interest and were most attractive to him were those which involved living human interests rather than those which raised questions of abstract law. And every one knows that as an advocate in cases of this class he was for some twenty years without a rival. But his success did not depend upon any mere power of words. He was not such a master of silver speech as his predecessor, Lord Coleridge, nor had he the wonderful gift, at all events in the same degree, which enabled Cockburn by the magic of his words and the vibrations of his voice to move his audience so perfectly and so truly by the same waves of emotion which inspired his own eloquence. And yet in his irresistible power as an advocate Russell was probably not second even to Cockburn. He was, like Cockburn, quickly touched by emotion and could give vivid expression to his feelings. And when there was opportunity he took great pains as to the form of his speeches. But it was not to artistic or literary form that his advocacy owed its peculiar success; it was to that indescribable power, that intense concentration of attention and force of will, which appeared in everything that he did, and which made him different from all other men. A shrewd observer and intimate friend of Russell on the Northern Circuit said of him many years

ago: "He is a wonderful man, but he is wasted as a lawyer. He should have been a great man of action like Napoleon."

As a judge he displayed, of course, the same kind of power which had distinguished him at the Bar, showing itself in a firmness of purpose, directness of character, rapidity and clearness of insight, combined with an ever alert sense of justice and determination to get at the truth which made the Court of the Lord Chief Justice an ideal tribunal for the trial of great causes. His influence extended far beyond the English law courts. In his intercourse with leading members of the American Bar and other distinguished Americans during his visits to the United States, and in the course of the Behring Sea and Venezuela arbitrations, Lord Russell made an impression which did much to remove old prejudices and to create a more friendly feeling towards this country on the part of American statesmen and of that very important class which constitutes the American Bar. His frankness and sincerity of character and his broad human sympathy had a peculiar attraction for, and influence upon, his American friends. It was a great disappointment to them that he was unable to attend the dinner given to members of the American Bench and Bar in the Middle Temple Hall on July 27th last. He had been obliged by illness a few days before to leave his work on circuit and go home to Tadworth. Of those who missed him at the Middle Temple Hall on that night who was there that realised that he was so soon to go to the last home of all and to his eternal rest? The great labourer's task was indeed over. Let us hope that his labour was not in vain. He has at least left behind an example which will be long remembered of good work conscientiously, manfully, fearlessly, and always thoroughly well done. On August 14th many of his old friends, many of those who had been his companions at the Bar and on circuit, stood round the grave in the little cemetery at Epsom, where all that was mortal of that great personality which had counted for so much in the affairs of men was laid in its last resting-place. His memory will be long cherished with reverence and affection. He was a kind, generous, and faithful friend.

THE HISTORY OF THE LAW OF NATURE: A PRELIMINARY STUDY.

[*Contributed by* SIR FREDERICK POLLOCK, BART.]

Its Continuity.—The term "Law of Nature," or natural law, has been in use in various applications ever since the time of the later Roman Republic. Their variety and apparent diversity have tended to obscure the central idea which underlies them all, that of an ultimate principle of fitness with regard to the nature of man as a rational and social being, which is, or ought to be, the justification of every form of positive law. Such a principle, under the name of reason, reasonableness, or sometimes natural justice, is fully recognised in our own system, but the difference of terminology has tended to conceal the real similarity from English lawyers during the last century or more. The neglect of mediæval learning which followed the Renaissance and the Reformation has also caused us to forget that the Law of Nature has a perfectly continuous history down to the date of its greatest and most beneficent achievement—one might almost say its apotheosis—in the foundation of the modern Law of Nations by Grotius. Much that has been written on this subject, even by eminent authors, assumes or suggests that Grotius revived for his own purposes an almost dormant conception of the Roman lawyers. In fact, the Law of Nature, as Grotius found it, was no mere speculative survival or rhetorical ornament. It was a quite living doctrine, with a definite and highly important place in the mediæval theory of society. What is more, it never ceased to be essentially rationalist and progressive. Modern aberrations have led to a widespread belief that the Law of Nature is only a cloak for arbitrary dogmas or fancies. The element of truth in this belief is that, when the authority of natural law was universally allowed, every disputant strove to make out that it was on his side. But such an endeavour would obviously have been idle if the Law of Nature had meant nothing but individual opinions. I now propose to give a summary view of the origin and development of the doctrine. The facts are not open to doubt, and any current errors are due to pure oversight rather than to misconstruction.

Aristotle.—Natural law, as conceived by mediæval scholars, was

derived partly from the Aristotelian distinction of natural and conventional justice, partly from the Latin exposition, led by Cicero, of the same idea in its later Greek forms, and partly from the still later special adaptation of it by the classical Roman jurists. The distinction was not altogether new in Aristotle's time; for the present purpose, however, the celebrated passage in the fifth book of the Nicomachean Ethics[1]—not from Aristotle's own hand, but certainly Aristotelian in substance—may be taken as the fountain-head. Justice, as a necessary element of the State (*τὸ πολιτικὸν δίκαιον*), is divided into natural (*τὸ μὲν φυσικόν, naturale*) and conventional (*τὸ δὲ νομικόν, legale*). Rules of natural justice are those which are universally recognised among civilised men. Rules of conventional justice deal with matters which are indifferent or indeterminate until a definite rule is laid down by some specific authority. Such are all rules fixing the amount of fines or other money payments. The rule of the road may furnish as good a modern example as any. Reason suffices to tell us that some rule is desirable on frequented roads, but whether we shall take the right or the left hand can be settled only by custom or legislation; and in fact the rule differs in different countries. Thus far Aristotle might seem to be merely noting the fact that some principles of social conduct are admitted everywhere, or at least wherever there is any settled government. But the Aristotelian use of the term "Nature" goes beyond this; it implies the conception of a rational design in the universe, which is manifested though never perfectly realised in the material world. This last qualification is important. Aristotle expressly guards himself against asserting that the rules of natural justice, as actually found in human society, are perfectly constant. General uniformity is enough to show that they exist, as the right hand is truly said to be the stronger, although there are left-handed people.

The Stoics.—The Stoics emphasised the teleological and ethical aspects of the Peripatetic doctrine, and fixed on the term "Nature" in this connection the special meaning of the constitution of man as a rational and social being. Every creature has its own nature and its own appropriate functions, and for man—whose nature is to be a citizen—the Law of Nature is the sum of the principles, founded in human nature, which determine the conduct befitting him in his rational and social quality. No term answering to the Latin *ius gentium* is known to occur in Greek philosophy, but the later Stoics at any rate spoke of *νόμος φυσικός* (which Aristotelian usage would not allow), and the original Aristotelian dictum was current in the Middle Ages in the form "Ius naturale est quod apud omnes homines eandem habet potentiam."[2]

The Roman Jurists.—As to Roman usage, it appears that *ius gentium*

[1] C. 7. This is one of the Eudemian books. The Latin equivalents given are those used by St. Thomas Aquinas, from the literal version prepared under his direction.

[2] Fortescue, *De Laudibus Legum Angliæ*, c. 16.

was old popular as well as legal Latin, and meant the common law or usage of mankind—the rules which, in fact, everybody recognises.[1] This is very near the φυσικὸν δίκαιον of the Greeks, taken on the practical and directly observable side. *Lex naturalis* or *naturæ*, *ius naturale*, came in, as deliberate translations of the Greek term, in the last period of the Republic. They must have been neologisms in Cicero's time, for in his earliest work, the *De Inventione*, as in that of the anonymous *Auctor ad Herennium* whom he follows, the idea is found, but is expressed by periphrasis. The law derived from Nature, as there set forth, is identical, as might be expected, with the morality of a high-minded Roman gentleman.[2] We are not concerned here with the technical history of *ius gentium* as part of the Roman system of law, but only with the reason given for its adoption. Obviously no positive authority could be assigned; and ancient Roman lawyers were no more willing than modern English ones to admit frankly that they were innovating on grounds of convenience. The Greek doctrine of the Law of Nature furnished exactly the ideal foundation which was wanted, and the classical jurists, perhaps with more aid from lost Greek philosophical works than we can now trace, proceeded to identify *ius gentium* with *ius naturale* for the purposes of legal science.

"Ius Naturale" and "Ius Gentium."—Strictly speaking, *ius naturale* should signify the rules of conduct deducible by reason from the general conditions of human society, *ius gentium* so much of those rules as is actually received and acted upon among all civilised people. We have already seen that not even philosophers expected natural justice to be completely realised in this world, nor can I find any evidence that either philosophers or lawyers believed it ever had been, notwithstanding the modern use of such expressions as "the lost code of Nature" with reference to the Roman doctrine. If they ever felt tempted to connect the Law of Nature with the fables of a golden age, they were wise enough to resist the temptation.

Thus a distinction between *ius naturale*, the ideal to which actual law and custom could only approximate, and *ius gentium*, the measure of the practical approximation at a given time, was quite warrantable, if not positively required from a theoretical point of view. Such a distinction, however, is but seldom made by the Roman lawyers, and then in exceptional matter, such as the question of slavery;[3] and modern Romanists appear still unable to agree whether passages of this kind

[1] Nettleship, *Contributions to Latin Lexicography*, *s.v.*

[2] *De Invent.* 2, 53, s. 161: "Natura ius est quod non opinio genuit sed quædam innata vis inseruit: ut religionem, pietatem, gratiam, vindicationem, observantiam, veritatem."

[3] The contrast is most strongly put in a fragment of Tryphoninus, D. 12. 6. *De Condict. Indeb.* 64: "Libertas naturali iure continetur, et dominatio ex gentium iure introducta est." It hardly needs pointing out that this is not an Aristotelian view. St. Thomas Aquinas tries to reconcile the earlier and later philosophers by a distinction of great ingenuity: *Sec. Secundæ*, qu. lvii. art. 3.

represent a received doctrine or individual speculations. There is no doubt that the terms were treated as synonymous in ordinary cases, and it is not difficult to suppose that in such cases the exceptional ones were not present to the minds of the writers, or the tacit exception of them was left to the reader's intelligence.

The compilers of Justinian's *Institutes* adopted from Ulpian a phrase extending the Law of Nature to all living creatures: "Ius naturale est quod natura omnia animalia docuit."[1] This would seem to be merely a piece of over-ambitious generalisation taken from some forgotten Greek writer, perhaps a rhetorician and not a philosopher. It is quite contrary to the Stoic conception of the Law of Nature, where Nature undoubtedly means the reason of the universe as exhibited in the specific moral and social character of man, and "following Nature" means realising, so far as possible, the ideal of human nature; so that the difference between man and other animals is more important than the resemblances. Ulpian's unlucky phrase is alone in the *Corpus Iuris*; Ulpian himself makes nothing of it beyond saying that rudimentary family institutions may be ascribed to irrational animals, and there is no sign of the notion having had any influence in Roman law. Nevertheless, this passage, having been put in a conspicuous place at the opening of Justinian's *Institutes*, and therefore speaking with the highest authority, has given infinite trouble to commentators. Most mediæval writers felt bound to accept—with more or less qualification, according to their boldness and ingenuity[2]—the threefold classification of *ius naturale*, the rules or instincts common to all animals; *ius gentium*, the rules common to all mankind; and *ius civile*, the particular law of this or that commonwealth.

William of Ockham's Classification. William of Ockham, one of the boldest, propounded a classification altogether independent of Ulpian. *Ius naturale*, he says, may be taken in three senses: (1) The universal rules of conduct dictated by natural reason; (2) rules which would be accepted as reasonable, and therefore binding, in a society governed (or in any society so far as governed) by natural equity without any positive law or custom of human ordinance; (3) rules which may be justified by deduction or analogy from the general precepts of the Law of Nature, but, not being in fundamentals, are liable to modification by positive authority.[3] The "secondary Law of Nature" of later books appears to cover William

[1] D. 1. 1. *De Iust. et Iure*, 1, 3.

[2] There is some good criticism in Ægid. Rom., *De Regimine Pr.* III. ii. c. 25. (This book is often cited without the author's name; care is therefore necessary to distinguish it from the other work, partly by St. Thomas Aquinas, of like title.)

[3] Dial. pars III. tr. ii. l. 3, c. 6, at p. 932, in Goldast, *Monarchia*, tom. ii. There is an express claim of originality; the Student says: "Istam distinctionem iuris naturalis alias non audivi." Apparently William of Ockham's dialogue has never been critically edited, or indeed printed elsewhere than in Goldast's enormous volumes.

of Ockham's second and third heads, but may generally be referred to the third. That which modern writers since Rousseau have commonly called the Law of Nature without qualification is nothing else than a one-sided development of the "secondary Law of Nature" as it was understood before the scholastic terminology was forgotten. But we must return to the normal process of mediæval thought on the main lines of the subject.

Influence of the Revival of Learning.—About the beginning of the twelfth century the revival of Latin learning, which is not unjustly called the "Lesser Renaissance," was fully as active in legal and political speculation as in other directions. The more exciting and more easily intelligible controversies of the sixteenth century have obscured the importance of this movement for latter-day readers. John of Salisbury may be taken as its typical English champion. It culminated, a century and a half later, in Dante. When we call it a revival of Latin learning, we include not only the study of Roman literature and the Roman law, but the study of Greek antiquity and philosophy so far as accessible through Latin. Indeed, there is reason to think that knowledge of Greek, in the thirteenth century at any rate, was not so very rare as has been commonly supposed. We have to remember that, for the mediæval history of the Law of Nature, Aristotle is not less important than Justinian, and Cicero's authority does not come far behind.[1] The heathen philosophers had been so much quoted and approved by Fathers of the Church that they stood in the eyes of mediæval scholars on almost as high a level of sanctity as an orthodox emperor. When the age of chaos was past, and the lawyer and the statesman, after many generations, once more had the means of being humanists, the Law of Nature presented itself with twofold and threefold claims to allegiance. Its authors and vouchers carried a weight second only to that of the law of God as declared by the authority of the Church. Evidently the Law of Nature could not be left out in any systematic discussion of human conduct. Any serious attempt to disparage it was no less out of the question. Even the Church could not afford to set herself against Aristotle, Cicero, and Justinian. The Law of Nature was too firmly in possession to be evicted. Yet the Church had to maintain her supremacy, as custodian of the divine law, in matters of faith and morals.

[1] See the Ciceronian passages collected in K. Hildenbrand, *Geschichte u. System der Rechts- u. Staatsphilosophie*, i. 564. (This volume seems to be all published.) The fragment of the *De Republica* preserved by Lactantius probably had more influence than any one passage in the jurists. As it is constantly referred to, it may be convenient to give the leading phrases here:—"Huic legi nec abrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest: nec vero aut per senatum aut per populum solvi hac lege possumus; neque est quærendus explanator aut interpres eius alius: nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac," etc. (*De Rep.* III. 22.) The use of the word "lex" involves the idea of rational design, and is justified by it, otherwise it would not be Latin.

The Law of Nature identified with the Law of God.—Only one way was possible. The Romans had already identified their *ius gentium* with the Law of Nature; the process must be carried a step farther by identifying the Law of Nature with the law of God. Philosophers had already used language which pointed that way. The step was taken, in the twelfth century, by the author or authors of the *Decretum* of Gratian, and with a thoroughgoing boldness which almost deserves the name of genius.[1] At the very head of the *Decretum*, therefore at the very head of the body of Canon Law as since collected, we read that the Law of Nature is nothing else than the golden rule, comprised in the Law and the Gospel, which bids us do as we would be done by, and forbids the contrary. It is supreme over all kinds of law by antiquity and dignity; it is immutable; it prevails over both custom and express ordinance. Here, it would seem, English lawyers must be content to find the origin both of the maxim, still received, that a custom cannot be good if it is contrary to reason, and of the doctrine —now rejected, but current (though never put in any effectual practice) in the sixteenth and down to the eighteenth century—that a statute may be held void for being repugnant to reason or "common right." The Law of Nature, however, is not absolutely co-extensive with the law of the Church or with the rules revealed in Scripture. For even revealed precepts, though of unquestionable authority, may and often do deal with matters not fundamental in themselves, but appertaining to ceremonial and positive regulation. It is assumed, rather than directly laid down, that the Church is the authentic exponent and interpreter of natural law. The assumption, however, is obviously required by reasons of discipline. It would never do for bishops and archbishops to claim practical independence under pretence of following the rule of natural reason at their own discretion. But the Law of Nature in the hands of an ultimate authority may be an effective solvent in many cases. A bishop who obstinately relies on a local custom against the general usage of the Church will find himself kicking against the pricks, not merely of official superiority, but of a law which he must needs recognise as paramount.[2] Truth before custom: had not Augustine said it? Thus the Law of Nature, as the eldest branch of the divine law, goes hand in hand with the no less divine authority of the Church to judge all the earth and do right. Such is, in outline, the system which has never

[1] I have looked into the best known manuals of Canon Law before Gratian (Regino of Prüm, Burchard of Worms, Ivo of Chartres) with the aid of the excellent indices to them in Migne's *Patrologia*, rather expecting to find the doctrine in an earlier stage, but have found nothing like it. Apparently Gratian makes a wholly new departure. There is reason to believe that the *Decretum* was strongly influenced by Abelard (see Thaner, *Abälard und das canonische Recht*, Graz, 1900); but whether there be anything to our immediate purpose in Abelard I must for the present leave to be verified by better mediævalists than myself.

[2] If any one should think the reinforcement superfluous, let him remember that the discipline of the Church in the middle of the twelfth century was not what it is now, or what it had become even a century or two later.

been substantially departed from by orthodox canonists. It is true that the *Decretum* of Gratian has not, in Canon Law, the same binding force as the later Decretals.[1] But if authority were wanting to Gratian's enthronement of the Law of Nature, it was amply supplied by Aquinas, who set his stamp on the doctrine in the next century.

St. Thomas Aquinas.—The relation of natural law to divine law in general is more fully defined by St. Thomas; they are not substantially different, but natural law is divine law so far as revealed through the medium of natural reason, "participatio legis æternæ in rationali creatura."[2] This identification was carried over by the glossators into the teaching of Civil as well as Canon Law. Thus Azo explains Ulpian's *natura*, in the perplexing dictum already mentioned, by *id est ipse Deus*.[3] It is needless to dwell farther here on the passages of St. Thomas Aquinas touching the Law of Nature, as they have been cited by recent English writers (Professor Holland and others) and are comparatively well known. Mediæval writers often speak for brevity's sake of divine law, without qualification, when they mean specifically revealed rules of conduct, and of positive law when they mean positive or conventional rules of human ordinance. Hence a current division of all law into divine, natural, and positive, where the first and last of these epithets must be understood to be used in the compendious manner just explained, and not to imply ignorance or doubt of the propositions, perfectly well known to the writers, that all natural law is divine, and some divine law is positive.[4]

"Deus Finem Naturæ Vult."—The full adoption and glorification of natural law by the *Decretum* of Gratian was, as above said, a master-stroke of policy. We may doubt whether it aimed so high as securing supremacy for the Church over the temporal power, or making the Church the arbiter in questions of secular government. Designs of that magnitude were then hardly formed. The Church was clearly bound to uphold the fundamentals of Catholic faith and morality against all earthly powers; we need not suppose that Gratian intended to go farther. At all events there was no way of making political speculation wholly subordinate to theology. It was not long before ingenious controversialists discovered that the supremacy of the Law of Nature was a double-edged weapon. For the Law of Nature, by its very definition, was a rule of life and society discoverable by human reason apart from any special revelation or the decision of any particular authority. When discovered, again, it was admitted to be absolutely binding. Natural law could not be in conflict with divine law, for it was part of the divine law.

[1] See F. W. Maitland in 2 *Encycl. Eng. Law*, 356, 357.

[2] *Prima Secundæ*, qu. xci., art. 2.

[3] See F. W. Maitland, *Bracton and Azo* (Seld. Soc., 1895), at pp. 32, 33.

[4] Selden's brief remarks in his *Table Talk*, s.v. *Law of Nature*, seem to ignore these distinctions. Denial of any natural law apart from a specially sanctioned revelation appears to be the substance of the dictum as reported. But this would make Selden more Hobbist than Hobbes himself, and we cannot suppose that he would have expressed his considered opinion in such terms.

The intentions of Nature, as philosophy calls them, are nothing else than the intentions of the Creator. As Dante puts it:[1] "Manifestum est quod Deus finem naturæ vult." So William of Ockham: "Omne autem ius naturale est a Deo qui est conditor naturæ."[2] Whatever, therefore, reason can establish as part of natural law may be used as a touchstone for propositions enounced by any particular person or body and purporting to be deduced from the specially revealed part of God's law. Such propositions, if contrary to natural law, must be erroneous. Nor could theologians or official persons of any kind claim a monopoly of natural reason. Even if the Church were the ultimate interpreter, the authentic voice of the Church could be found only in a General Council; for in the Middle Ages the infallibility of the pope, so far from being a dogma, was barely allowed to be a plausible opinion. Thus a wide field of speculation was kept open, and guarded by the Law of Nature, through the action of the Church herself. Not even a William of Ockham could think of going behind the notorious elements of orthodox belief; and indeed the Law of Nature could obviously have little application, if any, to purely theological argument. But, apart from the fact that some dogmas, or opinions which have since become dogmas, were still plastic, there was much to be done without any such extreme adventure. There were a great number of questions interesting to both Church and State, such as we now call constitutional, which remained legitimately open. One might not derogate from the law of God as expressed in Scripture and laid down by the Church. But in the case in hand the revealed law of God might be wholly silent, or it might be ambiguous, or authentic texts admitted or alleged to be applicable might be capable of widely differing interpretations. When once there were plausible grounds on either side and no decisive authority, the Law of Nature—like the king's ultimate power of doing justice in default of an adequate ordinary jurisdiction—could always be invoked by way of supplement. It might furnish a rule where no rule had been declared, or might guide interpretation where the application of the rule was not certain. Moreover, as we have pointed out, it was not free to a mediæval disputant to traverse the authority of the Law of Nature itself, but only to deny the correctness of the adversary's formulation or application of its rules in the particular case.

Pope and Emperor.—A weapon of controversy so tempting and lying so ready to hand could not fail to be freely and eagerly wielded. In fact, we find the Law of Nature, through the Middle Ages and down to the Renaissance, called in aid of many and various contentions, sometimes on the side of the opinions most favoured in high places, but as often on the contrary. Most chiefly it was an inexhaustible topic in the standing controversy for dominion between the Empire and the Papacy. Rival claims to supreme jurisdiction, urged with abundance of plausible authority on behalf of potentates who

[1] *De Monarch.*, 3, 2.

[2] Dial. III., ii. 3, c. 6, at p. 934, in Goldast, *Monarch.*, t. ii.

owned no common earthly superior, furnished exactly the field in which the Law of Nature might be used with brilliant dialectic effect as a *deus ex machina*. (So the champions on either side constantly endeavoured to turn the scale by demonstrating to their own satisfaction that the Law of Nature supported, as their case might be, the pope or the emperor.) Imperialist arguments were not wanting in boldness. William of Ockham maintains that the people of Rome have probably a divine, certainly a natural, right to elect their own bishop, and appeals with confidence to natural reason to show that a heretical or otherwise incorrigibly evil pope may lawfully be deposed.[1]

On all hands it was admitted, even by extreme partisans, that both pope and emperor were subject to the Law of Nature, though it might be and was urged that one or the other of them was more likely to form a correct judgment as to what its dictates were. As the champions of the Curia suggested or assumed that the official head of the Church was the best exponent of natural law, so the Imperialists maintained that it was the safe course to follow the emperor's judgment in case of doubt, and rash to dispute it unless it were so contrary to settled principles as to be manifestly erroneous.[2] English lawyers accustomed to weighing the relative authority of decisions will readily see how natural and indeed inevitable these positions were in a controversy where jurisdiction was the principal or only matter really in difference.

"Communis Utilitas."—It was no less inevitable that the appeal to the Law of Nature as the ultimate ground of decision between the conflicting claims should often become indistinguishable, to modern eyes, from a pretty frank appeal to expediency. We find even the language of modern utilitarianism anticipated, for *communis utilitas* is a quite current term. If Bentham had known what the Law of Nature was really like in the Middle Ages, he would have had to speak of it with more respect. It has been pointed out before now that in any case utilitarianism is just as much a system of natural law as any other dogmatic system of ethics or politics. Indeed, the political principles of the Imperialist doctors come very near to the well known theistic form of utilitarianism, according to which utility is the test of right conduct because God wills the happiness of his creatures.

Practical Application.—The Law of Nature being for the most part an engine of dialectic, we have no cause to be surprised at not finding much mention of it by name in official and authoritative documents. On occasion, however, it might serve the purpose of a prince who wished to assign imposing reasons for a bold reform without derogating from his own supremacy. Thus Philip the Fair of France in 1311 rested the enfranchisement of the bondmen on the Valois domain upon freedom being the natural

[1] Goldast, *Monarch.*, ii. 568, 934.

[2] "Error principis probabiliter ius facit": William of Ockham, Goldast, *op. cit.*, at p. 924.

birthright of man, and brought in the common profit of the realm (following the utilitarian tendency noted above) as a secondary motive. "Comme créature humaine qui est formée à l'image Nostre Seigneur doie generalement estre franche par droit naturel et en aucuns pays de cette naturelle liberté ou franchise par le jou de servitute qui tant est haineuse soit si effaciée et obscurcie . . . nous meus de pitié pour le remede et salut de nostre ame et pour consideration de humanité et de commun profit," etc.[1] The example was followed by Philip's son, Louis Hutin. A high authority has seen here a misunderstanding or misapplication of the Roman dictum, "Omnes homines natura æquales sunt."[2] But in the first place it is not clear that there is any reference to Roman secular law. The tone of this preamble is more ecclesiastical than civil, and the Church had always stood for freedom and favoured manumission. Again, it was considered perfectly fair throughout the Middle Ages to apply any text of authority in any sense it could be made to bear, without regard to what the original historical sense might have been. The more authoritative the text, the more applications were presumably to be discovered in it; and the most far-fetched use of a text is no proof that the writer had misunderstood its primary meaning. Besides, if Roman texts are in question, there are express dicta in the *Digest* to the effect that the Law of Nature does not recognise slavery, and it would be enough to rely on these without saying (as the ordinance does not say) anything about equality. I do not know whether it was open to a French lawyer in the fourteenth century to argue that a wholesale emancipation of this kind was beyond the power of the Crown, or, though not invalid, censurable on constitutional grounds. If any such objection could be expected, nothing could be more aptly framed to meet it than the king's appeal to the Law of Nature as the paramount reason of public policy.

The Reformation Controversies.—In the sixteenth century the controversies incident to the Reformation gave a singular impulse to speculative political discussion. It would be difficult to name any modern theory of sovereignty, of the State, or of the origin of society, which is not anticipated somewhere in this mass of polemics;[3] and in particular the foundation of civil government was quite commonly referred to some kind of contract. The terms of the contract, and still more its implied conditions, varied according to the opinions of the disputant. But this

[1] *Ordonnances des Rois de France de la troisième Race*, xii. 387. Maine, *Ancient Law*, 94, refers only to Louis Hutin's later ordinance.

[2] Maine, *l.c.*

[3] This is well noted by Professor Brissaud, of Toulouse, in his interesting study of the liberal movement in France (*Un Libéral au XVII^e Siècle: Claude Joly*, 1607—1700; Paris, 1898), p. 5: "Si l'on se reporte par la pensée à la fin du seizième siècle, on est tout surpris de trouver, an lieu d'une seule foi politique, une véritable mêlée des esprits: théorie du contrat social, théorie de la souveraineté populaire, systèmes aristocratiques, ou même démocratiques, c'est une confusion extrême."

did not materially affect the importance of natural law. For, since the original contract had in general no historical existence (however the ingenuity of dialectic might strive to disguise this), its terms could not be proved as a matter of fact. They could, therefore, only be presumed to be what they ought to have been; and what they ought to have been was eminently a question of natural law. More than this, it was a prevalent opinion that the original contract itself was of the nature of positive law, and subject to the Law of Nature, like all other branches of law. This or that particular State might be instituted by convention; but, a State being once established, its rights and powers, it was said, were determined by principles of natural right paramount to all conventions.[1]

The various controversial exigencies of the Reformation and the Catholic counter-Reformation produced endless divisions and cross-divisions among Catholic and Protestant publicists, unexpected or even paradoxical in a modern reader's eyes. We find Dominican and Jesuit champions of the Papacy deliberately referring the foundation of the State to natural reason alone, in order to deprive the prince of any claim to spiritual jurisdiction. This, with the *Decretum* of Gratian still claiming respect, was a perilous line of argument. Again, the principles of the Law of Nature were invoked to moderate the letter-worship of the Reformers: the text of Scripture, the Catholics said, must be taken with, and subject to, the universal principles discoverable by reason, and construed in a manner consistent with them.[2] Further, and this comes very near modern methods, it was sought to assure the sanctity of property and contract, including the supposed original contract itself, by representing those institutions as part of the immutable Law of Nature; this view was substantially adopted by Grotius, and has largely entered into modern economic doctrine. The process was made more plausible by identifying the *ius gentium* of the *Corpus Iuris* with the Law of Nature of the canonists. There were even those who dared assert that "Deus ipse ex promissione obligatur."[3]

The Sovereign Power and Natural Law.—One much agitated topic was the relation of sovereign power to natural and positive law. No doubt was entertained but that the Law of Nature was in some sense above all earthly potentates. This did not obviously decide the question whether a subject could in fact be justified in disobeying his lawful sovereign's commands as being contrary to the Law of Nature.[4] It was admitted that merely

[1] Authorities and references in Gierke, *Johannes Althusius, passim.* As to the last-mentioned point, see at pp. 105, 106. And see now Prof. Maitland's translation (with an excellent introduction) of the section "Die publicistischen Lehren des Mittelalters" in Gierke's *Das deutsche Genossenschaftsrecht*, vol. iii., *sub tit.*, *Political Theories of the Middle Age*, Cambridge, 1900.

[2] So, in England, Pecock (*Repressor*) as early as 1455.

[3] Gierke, *op. cit.*, 270, 271.

[4] No subject, of course, could be bound by his allegiance to commit a breach of manifest elementary rules of faith or morals. Cases of that kind are outside the argument.

consequential or "secondary" rules of natural law, which might be binding in the absence of positive enactment, could be modified or restrained by positive law. St. Thomas was decisive on that point.[1] Subject to this distinction, however, it was the prevalent mediæval opinion that commands of the prince contrary to the Law of Nature were not binding on his subjects and might be lawfully resisted—a doctrine sometimes tempered by advising the subject to presume, in case of reasonable doubt, that the prince's judgment was right. A more dubious question was whether sovereign power was subject to positive as well as natural law. Did the imperial *potestas legibus soluta* belong of right to all independent sovereigns? In other words, were they the fountain of positive law and above it? There was good authority for saying so.[2] But it was also vigorously maintained that the ruler could be guilty of a breach of positive as well as natural law, full sovereignty being reserved to the people, or in spiritual matters to the congregation of the faithful. Before the Reformation, Marsilio of Padua was the leading champion on this side.[3] This is the distinction of "organic" or "fundamental" from ordinary institutions. It is possible to argue, as Hobbes in effect did later, that such a distinction is incompatible with the Law of Nature. At this day it exists in a large majority of civilised commonwealths.

Reversion to the Civil Law.—As Protestant writers did not accept the authority of the Church, of the Canon Law, or of Aristotle, and the Roman disputants of the counter-Reformation were anxious to confute the Protestants on their own ground, the tendency of sixteenth-century controversy, as well as of Renaissance learning in general, was to bring the texts of classical Roman law into greater prominence.[1] Thus a more definitely secular and legal cast was given to the whole treatment of the Law of Nature, and the way was prepared for the great construction of Grotius. Not that Grotius has anything disrespectful to say of the mediæval doctors. On the contrary, he ascribes the greatest weight to their agreement on questions of moral principle; when they are found unanimous on such questions, their opinion is more than probable: "ubi in re morum consentiunt, vix est ut errent."[4]

The Law of Nature in England.—Here we may leave the Law of Nature ready to achieve its development into the modern Law of Nations, and turn to its fortunes in our own country. The Canon Law, as we have seen, was the principal vehicle of the Law of Nature, and canonists were anything but popular among English laymen. In politics they were associated with attempts to encroach on the king's authority for the benefit of foreigners, in common life with the meddling and vexatious jurisdiction of the spiritual

[1] *Sec. Secundæ*, qu. lvii., *De Iure*, arts. 2, 3.

[2] "Positiva lex est infra principantem sicut lex naturalis est supra." Ægid. Rom. III. 2, c. 29. This, with the caution that "principans" is the king in Parliament, has long been the accepted English constitutional doctrine.

[3] Gierke, *op. cit.*, 266.

[4] *De. Iur. B. et P. Prolegg.*, s. 52.

courts. (Talking of the Law of Nature, therefore, was not a good way to most English ears, and it is not strange that we find little about it in English authors.) William of Ockham, of whom we may justly be proud as our countryman, can still hardly be counted for this purpose. There is nothing particularly English about his career or his work; he is cosmopolitan, like all the great mediæval doctors.

One English royal judge, Sir John Fortescue, did commit himself a century later to treating of the Law of Nature by name, but the case is in every way exceptional. His book, *De Natura Legis Naturæ*, was a plea for the Lancastrian title to the crown of England, addressed to Continental readers in the hope of obtaining Continental support. It is at best the artificial performance of a champion wielding unfamiliar arms in a strange field. Compared with the work of trained dialecticians, it is of slight interest and of no value.[1] What little is said of the Law of Nature in Fortescue's principal and really interesting book, *De Laudibus Legum Angliæ*—a book also intended, it would seem, for Continental readers—is ornamental, and of no greater importance.

We might expect to find the mark of the regular scholastic doctrine in the early history of the Court of Chancery, but there are only occasional references to law *and reason*—we shall see the importance of this term presently—as the standard of decision. The current form, "for God and in the way of charity," is an appeal to the divine law of the Church rather than to natural law properly so called. Express invocation of the Law of Nature seems rather to have been purposely avoided. Probably it was felt that it would do more harm than good. The king's discretion was understood to be supreme in "matters of grace," and especially large wherever the profit of the Crown, or the rights of any one claiming by grant from the Crown, were affected. Any deduction of it from the Law of Nature would have looked like an attempt of canonical formalists to regulate the king's prerogative in some outlandish fashion of their own. (After the Reformation it was a harmless exercise to identify the Chancellor's equity with the Law of Nature or with a Roman prætor's jurisdiction.) I do not know of any example earlier than the seventeenth century.[2] Moreover, the administration of equity in anything like the modern sense was, in the fourteenth and fifteenth centuries, by no means the sole or chief business of the Court of Chancery.

The Law Merchant.—For distinct English recognition of the Law of Nature we must look to such law and jurisdiction as had an avowed cosmopolitan character, and principally to the law merchant.[3] This was always

[1] Mr. Plummer's account in his introduction to *The Governance of England*, at pp. 82–84, is enough for most purposes.

[2] See Malines, *Lex Mercatoria* (A.D. 1656), 311.

[3] The law of the Admiralty stood too much apart to be specially considered here. There were mutterings of insular pride against its cosmopolitan jurisprudence as early as the fourteenth century. See the very curious gloss quoted in Maitland's *Bracton and Aso* (Seld. Soc., 1895), at p. 125.

understood to be founded on general reason and convenience, evidenced by the usage of merchants. "The law merchant, as it is a part of the Law of Nature and Nations, is universal and one and the same in all countries in the world."[1] In 1473, it was said by Stillington, Edward IV.'s Chancellor, in the great case of larceny by a carrier "breaking bulk," that the causes of merchant strangers "shall be determined according to the Law of Nature in the Chancery." Foreign merchants put themselves within the king's jurisdiction by coming into the realm, but the jurisdiction is exercisable "*secundum legem naturæ* que est appelle par ascuns ley marchant, que est ley universal par tout le monde."[2] It is said that the practice was to refer such causes to merchants by commission from the Chancellor.[3] In the ordinary jurisdiction of the king's courts we find a trace, but only a trace, of common lawyers envying the dialectic resources of the civilians and canonists. Yelverton said that he did not see why, in the absence of authority, the king's judges should not also "resort to the Law of Nature, which is the ground of all laws."[4] It is just possible that some design for enlarging the king's power through judicial discretion was at the bottom of this; it is all but certain that in the following century Henry VIII. had a plan to compass the same end by favouring the study of the Civil at the expense of the Common Law. Nothing came of it in either case, and the Tudors showed their wisdom by working out their practical despotism in other ways and under more national forms.

"Law of Kind."—Theological and political tracts of the fifteenth century[5] just enable us to say that the proper English translation of *ius naturale* was "law of kind." "Doom of natural reason" is used as a synonym, and we have also the fuller expressions "moral law of kind, which is law of God," (the regular equation of *ius naturale* with *ius divinum*), "law of kind, which is doom of reason and moral philosophy."

Calvin's Case.—We do find the Law of Nature making a considerable figure in the argument of two well-known cases of the late sixteenth and early seventeenth century—*Sharington* v. *Strotton* (the case of "Uses" in Plowden), and *Calvin's* case (the *post nati*), 7 Co. Rep. 12 *b*. Both of these were highly exceptional, of the first impression, and argued throughout on general principle. As already hinted, there was no longer any risk in using the Law of Nature to adorn an argument, and the new learning of such civilians as Alberico Gentili was making it fashionable again. No

[1] Sir John Davis, *Concerning Impositions*, c. 3, "dedicated to King James in the latter end of his reign," first printed 1656.

[2] Y.B. 13 Ed. IV., 9, pl. 5.

[3] Malines, *l.c.* In the thirteenth and fourteenth century suits between merchants could be pleaded in the king's ordinary courts according to law merchant: Y.B. 21 and 22 Ed. I., 75; 32 and 33 Ed. I., 377.

[4] Y.B. 8 Ed. IV., 12.

[5] Pecock, *Repressor; Dives and Pauper*, printed 1536.

light is thrown by such peculiar examples on the usual habit of mind of English lawyers.

The Law of Nature and the Common Law.—But there is a real link between the mediæval doctrine of the Law of Nature and the principles of the Common Law. It is given by the use—correct in both systems, though constant, indeed exclusive, in the Common Law, and rather sparing in the Canon Law—of the words "reason" and "reasonable." This was pointed out in the first quarter of the sixteenth century by that very able writer, Christopher St. German, who must have been at least a fair canonist as well as an excellent common lawyer. In the preliminary part of *Doctor and Student*, after the Doctor has expounded the species of law according to the regular method of the schools, the Student gives the law of reason as the first of the general grounds of the law of England, and, in answer to the Doctor's enquiry where he puts the Law of Nature, explains that in the Common Law that term is not in use, but that where the canonist or civilian would speak of the Law of Nature, the common lawyer speaks of reason. Once pointed out, the analogy is obviously just, and a real connection at least probable, for we are not to suppose that the judges and serjeants never knew any more of what the canonists were doing than is disclosed by the Year-Books. In our own time, before the Judicature Acts, it was the judicial etiquette for Common Law and Equity judges to assume, whether they had it or not, a more than modest ignorance of one another's doctrines. Yet this striking passage of St. German has been completely overlooked in modern times. It would be easy not to discover from current accounts of it that the *Doctor and Student* was anything more or other than a text book of Common Law. We can account for this only by the Reformation having broken up the scholastic tradition, and made it the fashion to despise the Middle Ages. Sir Henry Finch, writing early in the seventeenth century[1]—say in the third generation from St. German—had quite lost the thread; what he says of the Law of Nature is mere confusion. He actually makes out the law of reason (by which he seems to mean something approximating to the "secondary" natural law of the schoolmen) to be something different. Not a lawyer, but a divine, Hooker, was the latest English writer who maintained the tradition substantially on its accepted lines, though not without variations and expansions which seem to be his own.[2] An English reader in search of a general exposition of the Law of Nature as understood down to the Renaissance might, indeed, do well enough to take Hooker for his guide.

Hobbes, etc.—Hobbes retained the names of natural law and natural right, and (contrary to what is sometimes said by writers who have not studied him adequately) his language as to natural law being immutable and eternal is as strong as anything to be found in orthodox publicists. But

[1] *Discourse of Law*, first published 1613.
[2] *Eccl. Pol.*, bk. i, cc. 2, 3, 8, 9, 10, 12.

by defining *lex naturalis*[1] with reference to self-preservation as the only guiding principle, he broke away from previous authority to work out a method all his own. The practical contents of Hobbes's morality are, nevertheless, not very different from other people's, nor was his political system without forerunners. But this does not concern us here. Richard Cumberland, Bishop of Peterborough, went about to refute Hobbes in the name of the Law of Nature (1672). But he made no attempt to return to mediæval lines. As to authority, he tries to get a fresh start from the Roman lawyers; as to principles and method, he is (as Hallam justly observed) a precursor of the modern utilitarians. By his time the scholastic Law of Nature had finally ceased to count in English speculation. In France it fared no better, if we may judge by Montesquieu, who had lost the historical tradition as completely as any insular moralist. He supposed the Law of Nature to consist only of such rules of conduct as would be applicable in default of any settled government[2]—that is, in the fictitious "state of Nature," with which the original Law of Nature had nothing to do.

The Modern Form of the Doctrine in England.—But the Law of Nature was not dead: it was only transformed into a shape more available for making conquests in the modern world. Its doctrine, purged of clericalism, had been assimilated, through Grotius and his successors, by the modern Law of Nations, and had thus become part of the common stock of eighteenth-century publicists. In that form it was accepted without demur by rationalist philosophers who would have scorned to be knowingly beholden to the Middle Ages. From the Continent it came back to England, rather as an appanage of polite letters than as a constituent of technical jurisprudence. Blackstone made use of it at second or third hand to ornament—though merely to ornament—the introductory chapters of his *Commentaries*. Lord Mansfield took up the rationalising movement as a practical reformer, and under his guidance it left permanent marks on more than one branch of English law. From the *Decretum* of Gratian to the equitable application of the "common counts," on grounds of "natural reason and the just construction of the law,"[3] and the full recognition of the law merchant in the king's courts, may seem a long way. The journey was certainly roundabout; but there is no real break in it.

There is much to be said of the function of natural or universal justice, including the idea of reasonableness in its various branches, in the later developments of our system. In particular an important part has been played by natural law, under the name of "justice, equity, and good conscience," or otherwise, in the extension of English legal principles under British political supremacy, but beyond English or Common Law jurisdiction. But this topic is large enough to deserve separate consideration.

[1] *Leviathan*, c. 14. Hobbes's *ius naturale* is not a rule at all, but every man's natural liberty to use his own power for his own advantage.

[2] *Esprit des Lois*, l. 1, c. 2. [3] Blackst., *Comm.*, iii. 161.

THE LEGAL ASPECTS OF THE SIPIDO CASE.

[*Contributed by* DR. SPEYER, *Member of the Brussels Bar.*]

THE Sipido trial and the painful incidents and discussions which followed it have given rise on both sides of the Channel to much ill-feeling. I venture to think that an impartial statement of the legal facts of the case would do much to dispel what I believe to be simply a deplorable misunderstanding. I have therefore tried to summarise the whole story of the trial as clearly as my imperfect knowledge of the English language will permit.

The Facts of the Case.—On April 4th, 1900, Jean Baptiste Sipido, aged fifteen, attempted to shoot H.R.H. the Prince of Wales at the Station du Nord in Brussels. He was arrested on the spot, just as he was trying to fire a second shot.

The Prince fortunately escaped unhurt. Sipido was handed over to the judicial authorities, who immediately began their investigations. It was soon discovered that, although Sipido had acted alone, others had instigated his action. Three lads of between sixteen and twenty—Meert, Peuchot, and Meire—by betting in his presence that he would not have the courage to carry out his criminal design and by procuring a revolver, had done all in their power towards inciting Sipido to commit murder. These lads, who all three belonged to the most extreme branches of the Socialist party, were also placed under arrest as soon as they could be found.

Their applications to be allowed to give bail were rejected by three judges sitting in chambers,[1] and on their appealing against this decision to the higher Court[2] their appeal was dismissed. After a thorough preliminary investigation by an examining magistrate, who spared no pains in the matter, the case came before the Chambre des Mises en Accusation, which body fulfils, amongst others, the duties performed in England by the Grand Jury. This Chambre des Mises en Accusation, which consists of three judges of the Court of Appeal, found a true bill against all four prisoners, who were therefore committed for trial at the Brussels Assizes on the following charges:—

Sipido was accused of a premeditated attempt to murder H.R.H. the Prince of Wales;

Peuchot and Meert were prosecuted as principals in the second degree

[1] This Court is called "La Chambre du Conseil."

[2] La Chambre des Mises en Accusation.

to the same crime, for having incited Sipido to commit it by counsel or command;

Lastly, Meire had to defend himself against a charge of aiding or countenancing Sipido in the commission of the same crime, but only as an accessory before the fact.

The Trial.—The trial began on July 2nd. The Chambre des Mises en Accusation having meanwhile again rejected an application for bail made on behalf of one of them, all four prisoners appeared under arrest. The defence of the accomplices was that they had looked upon the whole matter in the light of a practical joke; that, knowing the revolver would never shoot straight, they had simply tried to hoax Sipido; and that, moreover, they had never believed he would try to carry out his design to the end.

Sipido's defence was simpler still: his counsel submitted that no one could consider as a real attempt to murder, the act of a boy who, in pursuance of a bet of five francs against two, had tried to shoot with a revolver and cartridge bought for 3 fr. 50 c.; that the weapon used was so defective that no serious injury could have been inflicted even had the bullet struck the Prince; and that at any rate Sipido, being under sixteen years of age, could not be considered as *doli capax*. Although it is usual on the Continent to appeal to the jury's feelings, counsel scarcely alluded to the very widespread pro-Boer sympathies of the Belgian people, and certainly made no serious attempt to win their cause on that issue.

The case for the prosecution was very powerfully stated by one of the most able representatives of the Public Prosecutor's office. After recalling all the facts, he strove to prove that Sipido, in spite of his youth, must be considered as fully responsible for his actions, and that he had deliberately and with malice aforethought tried to murder the hereditary Prince of a kingdom to whom Belgium owed in a great measure, not only her independence, but also the priceless lessons of free and liberal government.

The Questions for the Jury.—The Belgian law does not allow the presiding judge to sum up; therefore on the conclusion of the speeches the Court immediately submitted to the jury the following written questions, the form and substance of which are minutely fixed by Arts. 337 *et seq.* of the Code of Criminal Procedure:—

Question No. 1.—Is Sipido guilty of attempting to commit a voluntary homicide on the person of H.R.H. the Prince of Wales?

Question No. 2.—Was this attempt premeditated?

Question No. 3.—Did Sipido act with discernment?

The eight last questions can be summarised as follows:—

Are Meert, Meire, and Peuchot guilty of taking part as accessories or principals in the second degree in the above-mentioned premeditated attempt to murder the Prince of Wales?

The meaning of these questions is clear enough without comment; but question No. 3 requires some explanation.

Whenever a child under sixteen is prosecuted, the jury, after coming to a decision as to the facts of the case, must also say whether the accused acted with discernment—*i.e.*, was *doli capax*. If the answer is in the affirmative, the law takes its ordinary course, but should the jury find that the prisoner had acted without criminal discernment, the Court [1] *must* acquit him, but *may* direct that he shall be detained in a reformatory until he comes of age (Art. 72 of the Penal Code and 340 of the Code d'Instruction Criminelle).

After considering their verdict for two hours, the jury came back with affirmative answers to questions Nos. 1 and 2, and with negative answers to all the others.

Meaning of the Verdict.—What was the meaning of this verdict?

The *legal* meaning was that the jury found the prosecution had not proved its case against the accomplices, and that, as regards Sipido, they held that by reason of his age he had not acted with discernment and could not be considered *doli capax*.

The *real* meaning of these answers was, however, quite different, and, though unexpressed, obvious enough. Knowing that a verdict of guilty against the accomplices made them liable to a sentence which might have amounted to from ten to fifteen years' penal servitude, the jury preferred acquitting them entirely, and they came to this decision all the more easily as the three lads, while awaiting trial, had in fact undergone a term of three months' imprisonment.

As to Sipido, however, the case was different: he being under sixteen years of age, the jury knew well enough that even if they did acquit him, the Court would order him to be detained in a reformatory until his twenty-first year, and this they deemed a sufficient and suitable punishment for the wicked act of one whose folly had, fortunately, had no fatal results.

In other words, the jury, instead of acting strictly according to a legal criterion, took such a view of the case *as juries are wont to do in all countries*; and it so happens that for once this common-sense view is strikingly in accord with the opinions of many learned criminalists, who believe that the most effectual way of dealing with Anarchists is to avoid making them martyrs, and therefore to treat them as insane or irresponsible members of the community whenever their age or mental condition makes it in any way possible to do so. Of course the wisdom of the views thus propounded by the jury is open to discussion; but nothing either in their demeanour or in their verdict justifies the imputation that they were swayed by political motives, and it may be truly maintained that in all probability their verdict would have been the very same had Sipido and his friends been on their trial for attempting to shoot President Kruger.

The Judgment of the Court.—It now remained for the Court—*i.e.*, the

[1] The Court consists of a judge of the Court of Appeal as president, and of two judges of the Tribunal of First Instance.

presiding judge and his two assistants—to deliver judgment in accordance with the above-mentioned verdict. Without the slightest hesitation the Court decided that Sipido should be placed in a reformatory till he came of age; but then arose the thorny question which has created such deplorable misunderstandings: Had the Court authority to enjoin that its order should be executed immediately, or was it not bound to suspend execution and leave Sipido in liberty until that order had been made absolute, either by a decree of the Court of Cassation or by expiration of the legally appointed time [1] within which Sipido had the right to appeal to that Court? [2]

Such was, of course, the contention of counsel for the defence, who argued that the negative answer to question No. 3 was equivalent to a verdict of not guilty, and therefore entitled them to an acquittal; that all acquitted prisoners must be immediately released; and that no legal authority could be found allowing a Court to detain a child ordered to a reformatory so long as that decree had not become absolute.

The Public Prosecutor did not concur, and tried to show, on exceedingly technical grounds, that the Court of Assizes was not absolutely bound to order Sipido's release pending decision by the Court of Cassation. But, in spite of his skill, it must be admitted that the position he took up was indefensible. It is beyond dispute that a negative answer to the question of a child's responsibility is equivalent to a verdict of not guilty, and entitles the accused to a full acquittal, and consequently to immediate release. But does this general proposition hold good even if the child so acquitted is ordered by the Court to a reformatory? All authorities tend to show that detention in a reformatory is not a penal punishment, but simply an administrative measure taken in the interest of the child, and that consequently Art. 21, s. 2, of the Law of April 21st, 1874, does not apply. Therefore, as long as the decree ordering detention has not become absolute, it can in no way prevent the immediate release of the child against whom it has been made.[3]

Such being the law, one course, and one course only, was left open to the judges: they were *bound* to order the immediate discharge of Sipido, and the Belgian Government could no more have prevented this order being

[1] Three days.

[2] In criminal matters the Court of Cassation exercises powers similar to those of the Court for Crown Cases Reserved.

[3] *Vide* Timmermans, *Étude sur la Détention Préventive* (Gand, 1878), No. 480; Blanche, *Études Pratiques sur le Code Pénal*, 2nd ed. (Paris, 1888), No. 337; Garraud, *Precis de Droit Criminel*, 6th ed. (Paris, 1898), Nos. 119 and 120; Nypels, *Législation Criminelle de la Belgique* (Bruxelles, 1872), vol. i., p. 202, No. 121; Cloes et Bongean, *Jurisprudence des Tribunaux de Première Instance*, vol. xvii., p. 121; Fuzier-Herman, *Répertoire du Droit Français, Verbo Cassation en Matière Criminelle*, Nos. 365, 381, and 382; Arts. 373 and 375 of the *Code d'Instruction Criminelle*; Law of April 20th, 1874, Art. 21; Decisions of the Court of Cassation of March 31st, 1838, and June 22nd, 1826 (*Reports*, 1846, part i., p. 270); Orders of the Minister of Justice of April 2nd, 1889, and August 25th, 1893 (*Recueils des Circulaires du Ministre de la Justice*, 1889-90, p. 113, and 1893-4, p. 33).

immediately obeyed by the police than the British Government could disregard a writ of *habeas corpus* at the demand of a foreign potentate.

Misconceptions in England.—The consequences of this action, however just, were of course foregone. Sipido immediately crossed the frontier and disappeared; the English press assailed the jury, the judiciary, the Government, and the whole Belgian nation with extraordinary violence; and diplomatic correspondence of a rather unpleasant nature followed. All this was not unexpected, but public astonishment became great when, on August 2nd, the Leader of the House of Commons declared, in the name of her Majesty's Government, that they had "informed the Belgian Government that they consider the result of the proceedings in connection with Sipido to be a grave and most unfortunate miscarriage of justice, and that they have learned with great surprise and regret that the Belgian Government did not see fit to detain Sipido pending a decision as to the course they should take in view of the verdict of the jury."

What did this rather ambiguous phrase really mean?

If Mr. Balfour, remembering the very openly expressed pro-Boer sympathies of the Belgian people, simply wished to convey that in his opinion the verdict was due to an intense anti-British feeling, and that the Belgian Government had not done all that was in their power to procure Sipido's punishment, it is only to be regretted that he was not more accurately informed. No impartial and fully informed lawyer would endorse his opinion as to the motives of the verdict, and as for the Government's action, the facts speak for themselves: the officials used every possible means at their disposal to obtain a conviction and to avoid Sipido's release, but failed.

But if, on the other hand, Mr. Balfour, speaking to the Mother of Parliaments in the name of the nation which has taught the world what liberty is, really meant that the Belgian Government ought to have illegally detained Sipido, in spite of the laws of the land and in the teeth of an adverse verdict found by a regularly constituted jury, simply to obey the dictates of a foreign Power, an energetic protest must be entered.

The Rights of Nations as to Offenders.—The only thing one civilised nation has the right to exact from another is that every legal means should be used to bring an offender to justice, and that he should be tried according to the laws of the land, without weakness or favour. But to go any further and to call upon a constitutional Government to break through its own legislation so as to comply with the wishes of a foreign country, however friendly or however powerful, is to formulate a demand with which no free nation could comply, for any attempt from within or from without to coerce the Courts of Justice into acting against the law or their conscience is an attack on the rights and liberties of every single citizen, and as such must be resisted to the utmost.

In a noble sentence, Hume says that England's fleets, her power, her monarchy, her Parliament exist in reality for one object only: to maintain

the liberty and the independence of the judges of the King's Bench. This is not true of England alone; it is equally true of every free nation, and Belgium, whose records of battle for freedom are as long and as glorious (though not as successful) as those of England, would have forfeited the respect of the civilised world if she had sacrificed to the demands of a foreign Power one single particle of the constitutional rights of the smallest or most wicked of her children.[1]

[1] At the momont of going to press it is announced that Sipido, whose appeal was rejected by the Court of Cassation on September 24th, has at last been found in Paris, arrested, given over to the Belgian police, and sent to a reformatory, as the Court of Assizes had ordered.

It appears that Sipido's case not being covered by the extradition treaties, the Belgian Government claimed him *in loco parentis*, the custody of a child ordered to a reformatory being temporarily withdrawn from the father and vested for the time being in the State.

The French authorities having consented to take this view of the case, Sipido was arrested and brought to Belgium, not as a fugitive criminal, but as a runaway boy claimed by his father or his *locum tenens*.

This ultimate arrest of Sipido vindicates in the most conclusive manner the *bonâ fides* of the Belgian Government, which ought never to have been attacked.

MILITARY SERVICE IN THE COLONIES.

[*Contributed by* STEPHEN MIALL, ESQ., LL.D.]

IF at any time it is desired to reorganise our system of national defence, it will be more helpful to consider the systems in our Colonies and in the smaller European States than the huge military organisations of Powers such as France and Germany.

Few people are aware of the far-reaching and complete schemes of defence now existing in Canada and some of our Australian Colonies, by means of which the whole male population is converted into a species of Militia, with elaborate arrangements of enrolment and balloting, and compulsory raising of soldiers if enough volunteers are not forthcoming. A few noticeable examples are here offered for comparison with the systems in use in Switzerland and Belgium:—

CANADA.

The defence of Canada is entrusted to an Active Army ("Active Militia") of volunteers, to be supplemented by a conscriptive ballot if necessary, and liable to serve for a few days annually for three years. There is a Reserve ("Reserve Militia") of the other able-bodied males, who are enrolled, but untrained and unarmed.

The Canadian Militia Act (49 Vict., 1886, No. 41) provides that—

> The Militia shall consist of all the male inhabitants of Canada of the age of eighteen years and upwards and under sixty not exempted or disqualified by law, and being British subjects by birth or naturalisation; but her Majesty may require all the male inhabitants of Canada capable of bearing arms to serve in case of a *levee en masse.*

This Militia is divided into four classes—

(i) Unmarried men between the ages of eighteen and thirty;
(ii) Unmarried men between the ages of thirty and forty-five;
(iii) Married men between the ages of eighteen and forty-five; and
(iv) Men between the ages of forty-five and sixty.

Men of the first class are to be called out before any of those in the second class, and so on.

A portion of the Militia is kept on active service, and if there are not enough volunteers their places are filled by balloting. In time of peace the

period for service in the Active Militia is three years. Judges, clergy and ministers, and persons disabled by bodily infirmity are exempt from service, as are the only sons of widows, being their only support. Half-pay officers, sailors, and Quakers are exempt from service, "except in case of war, invasion, or insurrection."

The Militia are liable to be called out to aid the civil power in case of riot, disturbance of the peace, or other emergency, and when so called out are to be treated as special constables.

The Act provides (s. 79):—

> Her Majesty may call out the Militia or any part thereof for active service, either within or without Canada, at any time when it appears advisable so to do by reason of war, invasion, or insurrection, or danger of any of them; and the Militiamen, when so called out for actual service, shall continue to serve for at least one year from the date of their being called out for actual service, if required so to do, or for any longer period which her Majesty appoints.

The Active Militia now consists of about 35,500 men, all voluntarily enlisted (infantry 28,500, artillery 4,000, cavalry 2,500, and a few engineers and others). The total of the Reserve exceeds 1,000,000 men. The Active Militia undergo an annual training of from eight to sixteen days, for which they receive pay. The Reserve seem to have no training or inspection.

For the year ending June 30th, 1896, the cost of the Militia was $2,136,000, excluding $23,000 pensions incurred during the Rebellion in 1885, and at other times. Further particulars of the force appear in *The Star Almanac* for 1895 and *The Canadian Almanac* for 1899.

Although this system is more far-reaching and better organised than the English, the number of men who actually undergo any military training is small, and cannot much exceed two or three per cent. of the adult males. If a fair proportion of the first class of Reserves were periodically inspected and put through a course of musketry instruction, the defence would be materially improved, though, of course, the cost would be considerably increased. It is worthy of note that even aliens are liable to serve in case of a *levée en masse.*

QUEENSLAND.

Queensland has a very similar organisation. The Defence Acts, 1884 to 1896, give details. S. 4 provides:—

> There shall be a Defence Force in Queensland consisting of all the male inhabitants of Queensland between the ages of eighteen and sixty years who are not exempted or disqualified by this Act, and who are British subjects by birth or naturalisation.

Provision is made for enrolment of this Defence Force and for its classification. An Active Militia is to be maintained by voluntary enlistment,

supplemented (if necessary) by balloting. The annual training is from eight to sixteen days. S. 57 provides:—

> The Governor may call out the Defence Force or any part thereof for active service, either within or without the Colony, at any time when it appears advisable so to do by reason of war or invasion, or danger of either; and the Active Force may then be increased to any required extent."

The exemptions from military service and other details are in the main similar to those in Canada. The Active Militia is maintained at a strength of 2,400. A small force of volunteers exists in addition to this Militia.

NEW ZEALAND.

The system in New Zealand is also similar, and is contained in the Defence Act, 1886. S. 16 runs:—

> The Militia shall consist of all the male inhabitants of New Zealand, including natives, between the ages of seventeen and fifty-five not hereinafter exempted, who shall have resided in the Colony for a period of six months.

The exemptions include judges, duly registered medical men in practice, and "all volunteers enrolled under any Volunteer Act for the time being in force within the Colony." The Governor may exempt Maoris in any district.

The Militia is classified as follows:—

(i) Unmarried men between seventeen and thirty years of age;
(ii) Married men between seventeen and thirty, and unmarried men between thirty and forty; and
(iii) Married men between thirty and forty, and unmarried men between forty and forty-five.

An Active Militia is to be formed by voluntary enlistment, supplemented by balloting. No Militiaman is to be compelled to attend for training and exercise more than 168 hours in any one year. If called upon for actual service, the Militia serve for one year. The cost of the Militia amounts to about £80,000 per annum. As in Canada, aliens appear to be liable to serve.

NEW SOUTH WALES.

New South Wales has a defence system much like our own. It comprises a small body of permanent forces paid by the State, and consisting of field and garrison artillery and a small body of partially paid troops, volunteers undergoing a few days' annual training, for which they are paid. Among such troops are the New South Wales Lancers, whose training at Aldershot in 1897 attracted so much attention. Their status is almost exactly similar to that of the English Yeomanry. There is, besides, a small body of

volunteers organised like those of the old country. The whole system is defined by the New South Wales Statute of 1878.

Most of the other Colonies depend solely on volunteers, in the English sense of the word, for defence.

SOUTH AUSTRALIA.

This Colony has a volunteer force as provided by the Defences Act of 1895.

VICTORIA.

This Colony practically depends on her volunteers as provided by the Discipline Act of 1883 and the Defences and Discipline Acts of 1890-91.

WESTERN AUSTRALIA.

This Colony has a body of volunteers and, like most other Colonies, a small permanent body of artillery, the expense of which is borne by the State.

CAPE OF GOOD HOPE.

Until the outbreak of the present war in South Africa the defence of the Cape of Good Hope was entrusted to volunteers alone, under the provisions of Statute No. 32 of 1892. One peculiarity is that volunteers may be called upon to serve out of the Colony. S. 18 of the Colonial Forces Act, 1892, provides :—

> Every volunteer corps whose services are accepted after the taking effect of this Act shall be liable to serve, subject to the provisions of this Act, for and during any period and wheresoever the interest of the Colony may require within the Colony or beyond its borders.

NATAL.

This Colony has a similar volunteer system, defined by Statute No. 23 of 1895. This provides, *inter alia*, that—

> The Governor may order out the volunteer force or any part thereof for military service in aid of the civil power or against an enemy or to repel invasion.

SMALLER STATES OF EUROPE.

Let us now consider for a moment what is provided for some of the smaller European States.

SWITZERLAND.

The circumstances of this country are somewhat peculiar. Its mountainous character changes the nature of warfare, and the chances of hostilities are lessened by the fact that the great Powers have acknowledged its

neutrality and guaranteed its integrity. Shortly described, the Swiss Army consists of—

(i) An Active Militia ("Élite") of all the eligible males, raised by conscription, and liable to serve for a few days annually for about ten years;

(ii) A Reserve ("Landwehr") of those who have taken their turn in the Active Militia. They are liable to serve a merely nominal number of days annually for another ten years;

(iii) Almost all other able-bodied men ("Landsturm") are liable to serve when called upon. They are enrolled but undrilled and unarmed. Of the whole adult male population at any time it is estimated that about one-sixth will be in the Active Militia, about one-tenth in the Reserve, and about one-third in the Landsturm.

Every Swiss citizen is bound to serve from the commencement of the year in which he attains the age of twenty. His obligation to serve lasts until the end of the year in which he attains the age of forty-four. As a recruit he serves during his first year forty-five days if in the infantry, fifty-five days if he is in the artillery, and eighty days if in the cavalry. Thereafter he drills with the Élite as follows:—

If cavalry, ten days annually for ten years;

If infantry, sixteen days in alternate years for twelve years;

If artillery, eighteen days in alternate years for twelve years.

He then passes into the Landwehr and drills five or six days every fourth year. The Landwehr is divided into two classes—

(i) Those from thirty-three to thirty-nine;

(ii) Those from thirty-nine to forty-five.

Class one would be called out before class two.

The Active Army consists of the bulk of the Élite and certain artillery and train details from the Landwehr. The fortresses are garrisoned by the residue of the Élite and by certain details from the Landwehr.

The figures are as follows, according to *The Armed Strength of Switzerland*, prepared by the Intelligence Division of the War Office, and published by the Queen's Printers in 1889:—

Élite	123,000
Landwehr	80,000
Landsturm	262,000

The total population of Switzerland was then about three millions.

The Landsturm consists of all Swiss citizens between the ages of seventeen and fifty not in the Elite or the Landwehr, and not exempt from military service. It also includes volunteers below the age of seventeen and above the age of fifty. They are enrolled and divided into two classes:—

(i) Those under twenty;

(ii) Those twenty and above.

It is intended that on emergency about thirty per cent. of the Landsturm would be armed, and the remainder would be employed as auxiliary pioneers, medical staff, guides, and cyclists. The Landsturm is not, as a rule, to be employed beyond the frontier.

By a Federal Law of 1894, a portion of the Landsturm is to be called out for instruction on one day in every year and is encouraged to join voluntary rifle clubs. Moreover, distinctive badges are to be provided by the members of the Landsturm at their own expense.

BELGIUM.

Belgium has an Active Army of about one-third of the eligible males, enlisted by ballot and liable to serve about half their time for eight years. After that they pass into a Reserve, which is undrilled and untrained. The Active Army is composed of four classes of men—

(i) "Miliciens," or men drawn by conscription;
(ii) "Volontaires avec prime," or men voluntarily enlisted for pay;
(iii) "Remplaçants," or substitutes provided by miliciens who have been drawn for service;
(iv) "Volontaires purs," true volunteers enlisting usually with the intention of gaining a commission.

Every Belgian is bound during the year in which he attains the age of nineteen to have his name inscribed on the conscription lists, with a view to taking part in the drawings for the military contingent of the following year. This obligation is also imposed on certain categories of foreigners.

Service in the Active Army is for a period of eight years; the infantry are called out for twenty-eight months during that period; the field artillery and cavalry for four years. After the expiration of the above eight years, the men remain in the Reserve for two years and may be called upon to render small services of a non-active character.

It seems from the returns that about one-third of the able-bodied men are drawn for service. Of the whole Active Army about three-quarters are miliciens, the remainder being remplaçants and volontaires.

Belgian regiments are not territorial; the reason for this is that there are two distinct populations in Belgium, the Flemish and the Walloon, and if the regiments were localised, they would consist exclusively of one race or another, speaking distinct languages—Flemish or French—and so practically unable to communicate with each other or to work together in military service.

The Active Army is maintained at a strength of a little over one hundred thousand. The population of the country is about six and a half millions. Full details of the military organisation with statistics are given in *The Armed Strength of Belgium*, published by the Intelligence Department in 1882.

ON THE STUDY OF COMPARATIVE JURISPRUDENCE.

[*Contributed by* EDWARD JENKS, ESQ.]

Prevalent Neglect of the Subject.—It has long been on the mind of the writer to make a temperate protest against the neglect with which we, as a nation, have treated one of the most suggestive and inspiring branches of advanced study; and certain recent occurrences have suggested that the present may be an opportune moment for calling attention to the matter.

The fact of the neglect will hardly be denied by any one at all acquainted with the circumstances. To the best of the writer's belief, no single English Law School offers the slightest inducement to its students, graduate or undergraduate, to take up the subject. It enters into no curriculum; it brings no prize or advancement as an encouragement to the student who enters upon its arduous pursuit. In spite of the well-known and almost ineradicable tendency of the English character, to neglect all studies which appear not to have any immediate bearing upon conduct, those in whose hands the highest interests of the nation have been placed, have made no effort to foster a subject which, regarded merely as a mental tonic and intellectual stimulus, is almost without a rival in the sphere of the moral sciences. In the long list of endowments devoted to the cause of education, two, and two only, are allotted, even partially, to a study which commenced its career in the modern world under the august auspices of Montesquieu, and has since been adorned by the distinguished names of Bachofen, Fustel de Coulanges, Maine, Morgan, Ihering, Laveleye, and McLennan. So hopeless, indeed, seems the prospect, that I observe with regret a tendency, even among the very limited number of English teachers of the subject, to abandon the attempt to force an unpopular topic upon unwilling audiences.

The Society of Comparative Legislation.—A case in point occurred at the founding of the very Society in whose organ this paper has the honour to appear. I had the privilege of being present at the inaugural meeting. At that meeting were assembled the most distinguished exponents of juristic science, academic and professional, to be found within the limits of the Empire. The Society was ushered into existence with the happiest auguries for its future prosperity—auguries which I trust and believe will be amply

fulfilled. The possibilities before it are boundless. All the more is it to be regretted, that it should have refused to recognise one great aspect of these possibilities. It is no secret, that when the title of the Society of Comparative *Legislation* was announced, more than one enthusiastic supporter of the project felt a cold thrill of disappointment. Why not the Society of Comparative *Jurisprudence*? That title would have included all that the originators of the movement aimed at, and left the door open for still wider developments. Experience has already proved, that a scientific organ devoted entirely to the subject of comparative *legislation*, appeals to a limited circle of readers; and the restriction has been, in practice, abandoned. What, I may ask, referring only to the last number of this Journal, have "Modern Developments of Mohammedan Law," "The Support of War by War," "Nobility in England," "The Seizure of the *Mashona*," and "Non-Christian Marriage," to do with Comparative *Legislation*? A wise refusal of the editors to be bound by the title of their Journal admitted these valuable and interesting papers. But, in spite of our English preference for calling things by their wrong names, it would have been more encouraging, and, I venture to think, sounder policy, to have openly founded the Society on a broader basis. If the word "Jurisprudence" was deemed too academic for the occasion, what objection could have been raised to the title of The Society of Comparative Law?

Justifying the Value of the Comparative Method.—But of course the advocates of a study have no right to complain of neglect, until they have fairly and openly shown its value; and it may be that students of Comparative Law have neglected their duty in this respect. So self-evident to them appears the value of their subject, that they may have overlooked the fact that its charms are not so evident to others. And, if I know anything of my countrymen, the kind of question which a conservative public is likely to put to those who advocate the claims of Comparative Law will be something like this—Can the subject be handled systematically and thoroughly? What is the use of it when it is thus studied? To these two questions I propose to offer brief answers.

Systematic Study of the Subject.—Can Comparative Law be studied systematically? We are all familiar with the dabbler in the subject. It is easy for a clever man to put together a paper in which "interesting" illustrations abound. Casual references to the separate property of married women in ancient Egypt, curiosities of Athenian procedure, embroidered descriptions of Russian *causes célèbres*, may easily be made to play the part of plums in a pudding otherwise poor enough. It is sometimes said, with doubtful truth, that it is possible for a teacher to know too much of his subject. But it seems to me equally probable, that the effect of manifest empiricism may be to disgust readers and hearers.

On the other hand, it is easy to mock at superficial assumptions of uniformity in widely divergent institutions. To pick up a fragment of

English legal history, and to compare it with a fragment of Roman legal history, apparently similar, is to serve no single philosophic purpose. That is the rule-of-thumb work of the juristic journeyman, not the sure stroke of the master-hand. Before such a comparison can be of the slightest value, we require to know something, not merely of the two fragments, but of their setting, also of their origin and their subsequent history. This reflection leads directly to the root of the question.

Law and Social Progress.—Law is not an isolated manifestation of human activity; it is merely one of the many phases of that complex mass of facts which forms the environment of a given community. And that environment is itself largely, though of course not wholly, the result of the efforts of the community to better itself in the struggle of life. In some cases these efforts are feeble, and in others unsuccessful; but, until we find authentic records of a community sitting placidly down to die, without an attempt to prolong existence, we are entitled to say that these efforts always exist, to a greater or less degree. And the net results of these efforts we call, for want of a better term, Progress.

The Hypothesis of Evolution: Primitive Society.—And here, of course, the most innocent enthusiast for Comparative Law is aware of the enemy lying in wait for him. "What! You base your so-called science on the hypothesis of evolution?" Not at all. I merely use that hypothesis as a test. It may be that comparative study will ultimately annihilate the hypothesis of evolution. But at present the probabilities point the other way. The evidence, patiently collected and sifted by a generation of observers and students, tends to bring out in a most striking way what Dr. Tylor calls the "stratification" of human, especially of legal, institutions; and this particularly in respect of the more rudimentary communities of mankind. It is not too much to say, that the publication of Lewis Morgan's epoch-making report in 1871 [1] revealed to the student of institutional history a hitherto unsuspected, or almost unsuspected, type of society, in which vast numbers of mankind still live, and from which, as day by day more clearly appears, still vaster numbers have emerged. Thanks to the labours of Morgan's critics and admirers, the work so ably done by Maine forty years ago has now received its highest reward, in leading to the discovery of a type of society beside which his patriarchal type, so long deemed to represent archaic man, stands confessed a *parvenu*.

Unity in Law.—Again let it be remembered, Law is no isolated phase of human activity; that is the keynote of sound Comparative Jurisprudence. As well expect to find a grand piano in a Red Indian's wigwam, as to find a Trade Marks Act among South Sea Islanders. Just as we might find the piano, so we might find the Trade Marks Act. But we should know what to think in such cases; and the inference we should draw would not be

[1] *Systems of Consanguinity and Affinity of the Human Family* (Seventeenth Annual Report of the Smithsonian Institution).

that pianos and trade marks were usual ingredients in primitive civilisations. The anomalies of legal systems are as full of teaching as their normalities; but they must be handled in a different way. And it is because the study of social *strata* is just the study which will detect anomalies, that such a study is the essential basis of Comparative Jurisprudence.

Phases of Social Life Tabulated.—Roughly speaking, it is now possible to tabulate the three great types (I will not at present call them stages) of human existence, and to allot to each its appropriate contents. Religion, social organisation, economy, law,—these are the great factors in the life of every community; and, the more rudimentary they are, the closer they are linked together. Briefly they run thus:

CONDITION.	RELIGION	SOCIAL ORGANISATION.	ECONOMY.	LAW.
Savagery . . .	Animism	Totemism	Hunting pursuits	Fetich
Barbarism . .	Ancestor-worship	Patriarchalism	Pasture and Agriculture	Custom
Civilisation . .	Monotheism	Monogamy	Manufactures and Commerce	Sovereignty

Here, then, we have at least the possible basis of a systematic study, in a simple grouping of phenomena, which brings into clear relief the working of the laws of association. But of course it is necessary to go further, and inquire whether phenomena are not merely associated, but related.

Obscurity in the Problems.—Here, no doubt, the investigation is often difficult, and the results occasionally disputable; but surely this is true of all the experimental sciences. Because, for example, the action of certain drugs on the human body is obscure and doubtful, we do not abandon the study of pharmacy as a hopeless nightmare. We take the results obtained, and proceed cautiously, with the light which they afford us, to make further discoveries. And in so doing we proceed from conjecture to probability, and from probability to proof. So in the study of Comparative Law.

The Relationship of Institutions: A Test.—Dr. Tylor, in a well-known and most valuable contribution to *The Journal of the Anthropological Institute*,[1] has sketched with the utmost clearness the outlines of a simple plan for discovering whether certain widely spread institutions are related to one another. Dr. Tylor's plan is intended to apply to the whole field of anthropology; but it is equally applicable to the study of Comparative Law. It is based on an exceedingly elementary mathematical proposition, applied to carefully collected statistics. It is suggested, for example, that three apparently distinct legal rules or ceremonies are connected *inter se*. A group of, say, thirty communities, of the general character in which such rules or ceremonies might be expected, is searched for evidence of their existence.

[1] Vol. xviii., pp. 245–272.

Suppose Rule A to be found in twenty cases, Rule B in fifteen, and Rule C in ten. It is evident, that if there were no connection between A, B, and C, we might expect to find these rules or ceremonies occurring in any subdivision of the group in the proportions of 66 per cent., 50 per cent., and 33 per cent., respectively. If this proves to be actually the case, then we can draw no inference as to their connection. But suppose that, in the twenty communities which contain A, the whole fifteen cases of B occur—*i.e.* a proportion of 75 per cent. instead of the normal 50; and suppose that, in the fifteen communities which contain A and B, all the ten cases of C are also to be found, or a proportion of 66 per cent. as against the normal 33. The inference would, I think, be irresistible, that the three rules were connected, either as cause and effect, or as descended from a common origin. And of course the inference would be similar, though not so strong, if the disproportions were less.

Scientific Treatment: Its Practicability.—This example, I think, makes it clear, that truly scientific methods may be applied to the study of Comparative Law. Of course, when we have obtained such results, we have established only a probability. If we suspect a connection, we have to discover what the connection is. Here, again, the exercise of care and reflection produces a really scientific method. If, in several instances, we can actually trace the development of A into B, whilst in no case can we detect a development of B into A—still more, if in a community or communities in which Rule B is in practical vigour, we find mere ceremonial or fragmentary traces which suggest the former existence of Rule A—then we are fairly entitled to suggest that, in the general course of human development, Rule A has preceded Rule B. It would take far too long to set out here the general methodology of Comparative Law, much of which has been sketched by Dr. Kohler in his admirable monograph *Zur Urgeschichte der Ehe*;[1] but enough has perhaps been said to show that the subject is capable of systematic treatment.

Abundance of Materials.—Likewise, it is impossible, for the same reason, to dwell upon the abundance and the variety of the evidence at the disposal of the student of Comparative Law. Suffice it to point out that, beyond the recorded histories of many legal systems, there are available many sources of evidence which are none the less valuable that they are indirect. In the one source of Language alone, whether it be treated as etymology or as comparative philology, there exist abundant suggestions, which, if carefully followed out, would assuredly lead to valuable results. So also in the ceremonial and symbols of ancient and modern communities; whether preserved for us in literature, or studied on the spot by competent observers. As an illustration of this truth, it is hardly necessary to refer to the notable results obtained by Bachofen from the former source, and by Maine from the latter. Once we grasp the pregnant truth, that a ceremony or a symbol

[1] Stuttgart, Enke, 1897.

is, in nine cases out of ten, the survival of a form which once corresponded with a practical reality, the key to many a mystery stands revealed. Even national legends and so-called myths, though these are, admittedly, dangerous material, may be made to yield valuable results to the skilled observer. A brilliant example is the posthumous work of Ihering, *Vorgeschichte der Indo-Europäer*.[1]

But we must pass now to a few words on the second question: what is the use of the systematic study of Comparative Law?

The Use of the Study of Comparative Law.—Of all nations we are the last to whom such a question should present any difficulty. Increased facilities for transport and travel have led, during the last century and a half, to a gradual absorption of the weaker communities of the world by the stronger. Of late years that absorption has been proceeding on a vast scale. The course of events has thrown by far the greatest resulting responsibility on the Empire to which we belong. Happily, the day has for ever gone by, in which the so-called inferior races were looked upon as the lawful spoil of the stronger Powers. The honest Englishman will confess to a pang of remorse as he thinks of the fate of the Tasmanian; the honest American will not be quite easy as he reflects on the destiny of the Red Indian. We desire now, at least our best men so desire, to deal justly with the weaker races—to prove to them that civilisation is a blessing and not a curse.

English Ignorance of Subject Races.—But invincible ignorance often mars our most earnest efforts. How often have we wronged the humbler members of a savage race, by enforcing "concessions" wrung by unscrupulous traders from so-called "chiefs"! How often have we fostered civil war, by thrusting our own rules of inheritance upon unwilling communities! How often have we treated as deliberate attempts at fraud, practices not merely permitted, but actually commended by barbaric morality, and outraged religious feelings as deep as, but different from, our own! It is not that our intentions have been evil, but that our ignorance has been great.

Spoliation of Communal Land.—To quote one glaring example. All students of Comparative Law are aware that, broadly speaking, communities in a primitive stage of economic development do not recognise individual property in land. The very existence of these communities, with their simple ideas of industry, depends upon the maintenance of this rule. The Maoris of New Zealand, half a century ago, were a case in point. But the British officials, to whom the government of the white settlements was entrusted, were totally ignorant of this elementary truth. At first they permitted purchases of land from the individual Maori occupants. The lamentable affair on the Wairau, which nearly resulted in a general massacre of the whites, was the immediate result. Then they assumed that, if the individual occupant had no right to sell the land on which he squatted, at least the tribal chief could make a good title. The

[1] Leipzig, Breitkopf, 1894.

tribal chief was, in many cases, as willing to receive the purchase money as the individual occupant; but, when the money had been paid, it was found that the mass of the tribesmen declined to recognise the transaction. To the British officials and settlers, this conduct appeared to be a monstrous fraud; and they attempted to enforce their claims. The Maori wars of the sixties were the result. At last the lesson was learned. But at what a cost! In reality, the refusal of the Maoris to recognise the land sales of individuals and tribal chiefs, was not a whit more unreasonable than the refusal of a college to allow one of its Fellows to sell the fee-simple of his rooms, or its Head to alienate the college lands.

Surely no further evidence is needed to show the importance to the Colonial and Indian official of a study of Comparative Law.

The Provocation of Frontier Races.—As the true nature of the many disastrous and costly frontier wars, which harass our Administration from time to time, comes to be investigated, more and more clearly does it appear, that a little knowledge would have gone far to avoid bloodshed and disaster. At no less than three points on the one continent of Africa are we now brought into contact with races so alien from us in blood and institutions that, unless we devote ourselves earnestly to a study of their ideas and customs, collision is almost certain to come. The northern frontier of India, and our newly acquired territory in Burmah, teem with similar possibilities. The outlook in the Pacific is dark with prospects of misunderstanding and injustice, wrought with the best possible intentions. The Civil Service Commission has already done great service to the Empire, by encouraging the pursuit of studies calculated to produce able and statesmanlike officials. The greatest boon which it could confer upon those to whose hands will be entrusted the delicate task of adjusting the necessary compromise between advanced and rudimentary institutions, would be to insist upon the importance of a study of Comparative Law. By its aid, the morality and social organisation of a primitive community may be read as in an open book, and the disastrous bungling of well-meaning incompetence be replaced by the well-directed efforts of trained intelligence.

ABUSIVE EXERCISE OF RIGHTS ACCORDING TO FRENCH LAW.

[*Contributed by* M. S. AMOS, ESQ.]

Allen *v.* Flood in French Law.—The decision of the House of Lords in *Allen* v. *Flood*[1] would appear to have settled for the Common Law the question so frequently discussed in recent years, whether the motive which prompted an act in itself lawful can render it tortious. A similar problem has in recent years engaged the attention of French judges and legislators. A brief account of the chief aspects under which the question has presented itself on the other side of the Channel and the solutions which it has received can hardly fail, therefore, to be of interest to English professional readers.[2]

It will be noticed that the question which French lawyers have had in view is whether the *abusive exercise* of rights is a ground of liability. *Abusive exercise* has in general been taken to mean *unreasonable* exercise—that is to say, exercise prejudicial to other persons without being productive of commensurate advantage of a legal kind to the holder of the right. Pure malevolence seems only to have been put forward as a necessary condition of liability in one connection—namely, that of *plaidoirie téméraire.*

"Abusif": Its English Equivalent.—It is not at first sight easy to translate the French term "*exercice abusif*" by an English equivalent. We cannot say that the problem, the discussion of which provides its *raison d'être*, is whether the exercise of a right is rendered tortious by the presence of "legal malice," for legal malice merely implies the presence of intention in an act possessing all the other characteristics of a tort, and requiring only intention to complete it, as in deceit. This is plainly not the same as unreasonable action. On the other hand, "express malice" is too narrow to be the equivalent of "*abus*"; it corresponds rather to the

[1] App. Ca. 1898, 1.

[2] As to the law of Scotland, see Lord Watson's *obiter dicta* in *Bradford Corporation* v. *Pickles* [1895], A.C. 587: "If a landowner proceeded to burn limestone close to his march so as to cause annoyance to his neighbour, there being other places on his property where he could conduct the operation with equal or greater convenience to himself and without giving cause of offence, the Court would probably grant an interdict. But the principle of *æmulatio* has never been carried further."

"*esprit vexatoire*" required by the Chambre Civile of the Cour de Cassation as an element in *plaidoirie téméraire.*

An intermediate conception of malice closely corresponding to the French conception of *abus* has been developed by recent English decisions, and was the topic of discussion in *Allen* v. *Flood.* In that case it was not "legal malice" which was decided to be irrelevant; because that element, merely importing intention in the commission of a tort, would be present or absent according as the action was allowed or refused.[1] Nor was it "*express*" malice in the sense required for malicious prosecution and for liability in the case of privileged libels, since it was understood that the defendants were actuated by no personal malevolence against the plaintiffs. It is submitted that the element the relevance of which was under discussion was, as has been said, malice in an intermediate sense, closely corresponding to the *unreasonableness* which is the topic of French decisions. Wills J. in *Allen* v. *Flood*, referring to *Bowen* v. *Hall*, said :—

> I think the question whether the act complained of was malicious would depend upon whether the defendant had, in pursuing his own interests, done so by such means and with such a disregard of his neighbour as no honest and fair-minded man ought to resort to (*Allen* v. *Flood*, A.C. 1898, 51).

Lord Herschell comments on this dictum, that it makes malice, even in the sense put forward in the present connection, no longer depend upon *motive*, but upon the means used and the disregard of one's neighbour (*ibid.* 118).

In short, in England, as in France, the question is whether one may, even in the exercise of a right, intend harm which is not productive of reasonable advantage of a proper kind to oneself.

A Ground of Liability in France.—In spite of the dissent of certain writers and tribunals, it is a generally accepted principle of French law that the unreasonable, abusive, or malicious exercise of a right is a ground of liability. This principle is explicitly stated by numerous authors of recognised authority.

Sourdat (*Responsabilité*, 1872 ; 440) says :—

> Nous croyons que tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer,[2] quand il n'a

[1] Cf. Bigham J. in *Boots, Cash Chemists*, v. *Grundy* (*Times*, June 22nd, 1900): "It is useless to say that lawful acts are malicious or are done without just cause or excuse, for no lawful act can be malicious in a legal sense, nor does it require to be defended by any just cause or excuse. It carries its just cause or excuse with it."

[2] Quotation from Art. 1382 of the Code Napoleon, which, with the four articles that follow, states all that the French Code has to say upon the subject of torts. Nothing is more surprising to the English lawyer entering upon the study of the French system than the extremely meagre attention given by the Code and by commentators to the subject of quasi-delictual liability. The Code devotes two hundred and eighty-one articles to contracts and quasi-contracts, and five to torts. A similar proportion is observed by the

pas sa source dans l'exercice d'un droit reconnu par la loi, *ou quand il résulte d'un mode particulier d'exercer son droit que n'a pas d'utilité pour son auteur, ou qui aurait que être évité.*[1]

Larombière (*Obligations*, 1857, Arts. 1382, 1383, note 11) says :—

Pour qu'une entière et parfaite irresponsabilité garantisse l'exercice d'un droit, il faut que celui qui l'exerce en use prudemment. . . . L'abus qu'il en aurait fait, d'une manière préjudiciable à autrui l'obligerait à réparer le dommage causé. À plus forte raison, en serait il tenu si, entre diverses manières d'exercer son droit, il avait mechamment, et dans le dessein de nuire, choisi celle qui devait ou pouvait être la plus dommageable. La malice est alors plus qu'une faute, et ne mérite aucune indulgence.[2]

Applications of the Principle.—The chief topics in connection with which the question of liability for abusive exercise of rights has come up for practical discussion in France are the following :—

1. The misuse of property.
2. Dismissal of servants or employees, without breach of contract (*rupture intempestif*).
3. Judicial proceedings (*plaidoirie téméraire*).
4. Boycotting.

—— 1. **The Misuse of Property.**—It is clear law in England that the reasons which the owner of property may have for using it in one way rather than another are without influence upon the question whether he has committed a tortious act (*Chasemore* v. *Richards*, 7 H.L.C. 349 ; *Acton* v. *Blundell*, 12 M. & W. 324 ; *Bradford Corporation* v. *Pickles* [1895], A.C. 587). A contrary view appears to have been held by Roman lawyers. In an often-quoted passage Ulpian says :—

Denique Marcellus scribit, cum eo, qui in suo fodiens, vicini fontem avertit, nihil posse agi ; nec de dolo actionem ; et sane non debet habere, si non animo vicino nocendi, sed suum agrum meliorem faciendi id fecit (D. 39, 3 ; 1, § 12).

principal commentators. Only one modern work of repute (that of Sourdat, quoted above, published in 1872) is exclusively devoted to non-contractual responsibility. Practically no attention is given to the subject in legal education. The present writer has frequently remarked on this circumstance to French lawyers, and has generally been met by the explanation that quasi-delictual fault is a matter of *fact* and not of law. The contrary has, however, been several times expressly decided by the Court of Cassation, and an examination of the reports reveals a great wealth of decisions on this branch of the law. It is a striking example of the influence of fashion in the distribution of the attention of legal writers.

[1] The same writer (*ibid.* 442) does not consider that, in the absence of legal duty, mere omission would give rise to liability, even where there was an *intention to injure*, and denies that this view is inconsistent with that put forward in the passage quoted above, on the ground that a person guilty of a mere omission cannot be said to have *caused* an injury, though he has *permitted* it.

[2] See also Laurent, *Droit Civil*, t. 6, n. 140; Baudry-Lacantinerie, *Droit Civil*, ii., n. 1349.

To Labeo is attributed the view that an action for diverting a stream is inadmissible—

"Si modo non hoc animo fecit ut tibi noceat, sed ne sibi noceat" (D. 39, 3; 2, § 9).

The same principle has been followed in France, and has recently found expression in an amendment to the Code. For Art. 641, which formerly ran, "Celui qui a une source dans son fonds, peut en user *à sa volonté*," have, by an amendment of April 8th, 1898, been substituted the words, "Celui qui a une source dans son fonds peut toujours user des eaux à sa volonté *dans les limites et pour les besoins de son héritage*" (new Art. 642). This change in the text of the law is in accordance with decisions of the Courts and with the opinions of writers, though neither have been unanimous. Demolombe (*Servitudes*, 1876, i., § 66) refers to the doctrine that the owner of land is not at liberty to do what he likes with a spring therein, as ancient and respectable, but withholds his approval.

An interesting case in which wanton misuse of a spring was held to be a ground of liability is that of *Badoit* c. *André*, decided in appeal at Lyons in 1856 (Dalloz, *Périodique*, 56, 2, 199). The defendants and the plaintiffs both had access, through springs on their respective properties, to a common source of mineral water. It was established that the defendants used a pump at their spring *dans l'intention de nuire à Badoit*, and that this intention was made evident by the fact that the defendants *n'utilisent en aucune façon le surcroît d'eau minérale obtenu à l'aide de leur pompe, et le déversent dans la rivière de la Loire.* "Un pareil acte," says the judgment, "sainement apprécié à la lumière de la règle, *malitiis non est indulgendum*, constitue un des cas de quasi-délits prevus par l'Art. 1382." See also in the same sense the *Affaire Mercader*, D.P. 49, 1, 305.

The principle that malicious use of property is tortious has found more general expression. A recent writer (Capitant; two articles on "Obligations de Voisinage," *Revue Critique de Législation*, March and April, 1900) lays down broadly that the *faute d'intention* is a case of fault or tort in the use of property. The proprietor is liable when *le droit est exercé d'une façon vexatoire, dans le but de nuire, de porter préjudice à autrui;—malitiis non est indulgendum* (p. 168). Demolombe (*Servitudes*, ii., § 648) opposes this general principle, as we have seen that he disputes the application to the particular case of the spring. He admits that the doctrine that an owner is responsible when his exploitation *n'a d'autre but que de nuire à* [*son*] *voisin sans intérêt pour lui-même* has a certain authority, but argues that the practical difficulties which would confront judges in dealing with a demand that an owner should choose the less prejudicial of several modes of exploiting his property would be wellnigh insurmountable. Decisions on the question are somewhat rare. The following are examples in the former sense:—

In *Doerr* v. *Keller* (D.P. 56, 2, 9) the Court of Appeal of Colmar in 1855 gave a judgment for the plaintiff on the following grounds:—

Considérant qu'il a été constaté *par l'expertise* [!] que c'est méchamment que l'appelant, sans utilité pour lui, et dans l'unique but de nuire à son voisin, a élevé, en force et presque contre la fenêtre de l'intimé . . . une fausse cheminée.—Considérant que l'exercice [du droit de propriété] doit avoir pour limite la satisfaction d'un intérêt sérieux et légitime. . . .

It may be remarked on this case that the obstruction of the view from a neighbour's window is not necessary in France to prevent his acquiring an "ancient light," as French law gives the Roman remedy of an *action négatoire* to prevent the establishment of a servitude by prescription.

A case decided in 1873, that of *Le Prince de Wagram* c. *Marais* (D.P. 73, 2, 185), closely resembles the classical case of *Keeble* v. *Hickeringill*. The Prince de Wagram, Marais's neighbour, thinking that Marais grew certain crops on his land only with the object of attracting his, the prince's, game, decided to interrupt the offender's shooting-party, and "imagina de faire . . . un tapage organisé qui, effrayant le gibier, rendait la chasse impossible." It was decided that he was liable to Marais, as being guilty of "des manœuvres vexatoires et pratiquées avec l'intention manifeste de nuire." The note to the report, taking the motive as the ground of distinction, considers this decision consistent with previous judgments, refusing to consider shooting with beaters an actionable nuisance, however disturbing to a neighbour's game.

—— 2. **Dismissal of Servants.**—On this subject also there has been a recent addition to the Code. Previously to 1891 numerous cases brought before the Courts the question whether, when a contract of service has been made without express stipulation as to the duration of the contract, either party could, in the absence of special custom, put an end to the contract at any moment in an arbitrary manner, without being liable to make any indemnity to the other party. Here, so far as the contract goes, both parties are perfectly free. The question is again as to the existence of liability for the exercise of a right.

The older decisions recognised a right to indemnity in such cases. In the *Académie Impériale de Musique* c. *Polier*, decided by the Cour de Cassation in 1859 (D.P. 59, 1, 57), it was said that

la rénonciation ne peut . . . être faite à contretemps et d'une manière préjudiciable à l'intérêt de l'une des parties—des tribunaux peuvent . . . accorder . . une indemnité.

About 1872 a change took place, and the Courts in a long series of decisions refused damages for the unilateral breach of contracts of service *à durée indéterminée*. The question especially arose in connection with the claims of a class of employees in the railways known as *agents commissionés* (see an article on the question by Duffan-Lagarrosse, *Revue Critique de Législation*, September, 1899). In these cases the Courts refused

to enquire whether dismissal had or had not been for *motifs légitimes*. The question which excited public interest was finally dealt with by the Law of December 27th, 1890, which added several paragraphs to Art. 1780 of the Code Civil. That article formerly ran: "On ne peut engager ses services qu'à temps, ou pour une entreprise déterminée." To this is now added: "Le louage de service, fait sans déterminations de durée, peut toujours cesser par la volonté d'une des parties contractantes. Néanmoins, la résiliation du contrat par la volonté d'un seul des contractants peut donner lieu à des dommages-intérêts." The remaining paragraphs provide for the estimation of the damages, and invalidate contracting-out clauses. The new text is not understood as entirely depriving an employer, under one of these contracts, of the right to discharge his employee without indemnity; but it renders the question of the reason for dismissal relevant (cf. Duffan-Lagarrosse, *loc. cit.*). Numerous attempts were made, both in the Chamber and in the Senate, to define the conditions of the right to indemnity, but the problem was found insoluble. It was agreed to leave to the Courts the task of working out the necessary rules.

For a time the opinion gained a footing that the effect of the new law was to throw upon the party putting an end to the contract the burden of proving that he had a legitimate reason for doing so. This doctrine has been overruled by the Court of Cassation (*Debaitre* c. *Maitre*, D.P. 95, 1, 249), which has decided that the plaintiff must show that the breach was unreasonable; a mere failure to give notice is not sufficient. The validity of the ground of breach is a question of law, and, as such, subject to the revision of the Court of Cassation (cf. judgment of that Court last cited). Among reasonable grounds of dismissal may be cited, besides bad conduct on the part of the employee, a diminution of business, change in methods of manufacture (cf. note by Planiol, D.P. 93, 2, 377, and D.P. 95, 1, 249, 2^de^ *espèce*), or, *semble*, a threat of strike from a trades union, or other *force majeure*.

In this connection it is convenient to mention two somewhat analogous classes of cases in which unreasonable severing of relations has been held to give a cause of action in tort.

As has been decided on several occasions, a business agent, engaged for an indeterminate period, is entitled to damages for sudden dismissal without good reason (cases cited in Dall., *Suppl. Mandat*, 168).

The treating of a promise of marriage as analogous to a contract of service *à durée indéterminée* is justified by French authority (cf. Duffan-Lagarrosse, *loc. cit.*, p. 489). Like the latter contract, a promise of marriage, whether the parties be the bride or bridegroom or the parents of either, is open to unilateral rupture; but here, also, French jurisprudence recognises a cause of action where the rupture cannot be justified on reasonable grounds —see, for example, the *Affaire Lacour* c. *Quennet* (D.P. 95, 2, 86), an action by a prospective bridegroom against a recalcitrant father. Judgment for

the plaintiff on the ground that "il n'a été justifié d'aucune raison plausible à l'appui de cette rupture." It would seem that in this class of cases the presumption is against the author of the breach.

—— 3. **Vexatious Judicial Proceedings.**—An edict of Francis I. in 1539 gave a right to damages against the party failing in an action in proportion to the "temerity" of the action (Art. 88, quoted in Dall. Rep., *Responsabilité*, 112). Though not reproduced in any of the Codes, the principle of this law has been adopted by the Courts in modern times, and has been applied, not only against plaintiffs, but against defendants, appellants, creditors refusing to consent to a composition out of Court (D.P. 74, 5, 362), and other cases. There is no mention in the books of liability for malicious criminal prosecution. There are two reasons for this: (1) Graver offences can only be presented by the public prosecutor; (2) *Dénonciation calomnieuse* is a substantive offence (Art. 373 C.P.), the prosecution for which may be accompanied by a civil claim for damages.

There is some difference of opinion in France as to the precise conditions of liability for *plaidoirie téméraire*. This difference appears to divide two of the chambers of the Court of Cassation (see note by Cohendy to D.P., 1891, 1, 193); the Chambre des Requêtes apparently admits liability for damages —above and beyond the liability for costs, be it remarked—when the party is merely *imprudent et téméraire*; in other words, simply on the ground that the action or defence, as the case may be, was without reasonable excuse; whereas the Chambre Civile requires that the party should have acted *méchamment, de mauvaise foi, avec malice*. Here we have put forward as a ground of liability no longer the mere *unreasonable action* which is the constituent of *abus* in the other classes of cases under discussion, but the *express malice* required by the English doctrine for liability for malicious prosecution and privileged libel. Even the Chambre Civile admits *erreur equipollente au dol* as a condition of liability alternative to "malice" or *mauvaise foi* (D.P. 89, 1, 52). The following examples of both classes of judgments may be noticed:—

Vialotte v. *Galland* (D.P. 91, 1, 193) was a case in which the defendant was held liable for having brought unnecessary actions (in which, however, he was apparently successful), not against the plaintiff, but against third parties. The defendant sold the business of a notary public to the plaintiff, but did not transfer all the outstanding debts. The defendant then proceeded to recover certain of these debts in an abusive and vexatious manner, thus causing injury to the business which he had transferred to the plaintiff. Here unreasonableness in the ordinary sense could not be alleged, as the defendant was justified in his claims. The plaintiff obtained judgment, however, on the ground that the action was admissible whenever the defendant had acted "abusivement, par malice, ou par esprit de vexation, ou même par une erreur grossière équivalente au dol."

The doctrine that mere absence of justification for a defence does not

support a claim for damages is illustrated in numerous cases—*e.g.*, D.P. 89 1, 413; D.P. 90, 1, 184 and 386.

On the other hand, in *Chemin de Fer P.-L.-M.* c. *Moliere* (D.P. 90, 1, 37) the railway company (the defendant in first instance) was held liable in damages for a defence to a justified claim "attendu que . . . . la résistance de la compagnie . . . . était *inexplicable*; que le jugement attaqué a ainsi constaté à bon droit un abus constituant une faute." In this case liability is placed on the broader ground of unreasonableness. This decision does not stand alone (cf. *Houlès* c. *Calas*, D.P. 65, 1, 339, and Laurent, *Droit Civil*, t. 20, n. 412).

—— 4. **Boycotting.**—Next come cases in which the defendant has sought, by the exercise of persuasion or authority otherwise than in the pursuit of simple trade competition, to deprive the plaintiff of employment or custom.

The most striking French case on the topic is that of *Joost* c. *Le Syndicat de Jallieu* (Siret 93, 1, 41) decided by the Court of Cassation on June 22nd, 1892, after full discussion at every stage. This case, which resembles that of *Allen* v. *Flood*, resulted in the adoption by the French Supreme Court of the contrary principle to that adopted by the House of Lords.

In January, 1888, one Joost became a member of the *syndicat* (or trades union incorporated under the Law of March 21st, 1884) of working printers of Bourgoin-Jallieu. In January, 1889, he ceased to pay his subscriptions. He was expelled from the syndicate, and by way of further punishment, or to compel him to rejoin and pay up, pressure was brought to bear upon his employer to dismiss him, by a threat from the committee of a general strike. He was in consequence dismissed. It was not disputed that, Joost being employed *à durée indéterminée*, the employer committed no breach of contract. As in *Allen* v. *Flood*, therefore, the step which the employer was induced to take was a lawful one, and the means used by the union to operate on his mind were lawful. The questions raised by the action which Joost brought against the syndicate were: (1) Was the question of the propriety of the reasons prompting the syndicate's action relevant in determining its liability? and (2) were its reasons improper?

In the first instance the first question and on appeal the second question were decided in the negative. On a *pourvoi* to the Court of Cassation both were decided in the affirmative. On a *renvoi* to a second court of appeal, in accordance with French practice, the decision of the Supreme Court was adopted. The following passages may be cited from the judgments:—

The Tribunal Civil of Bourgoin, in its judgment of January 11th, 1890, said:—

Il n'y a ni délit, ni quasi-délit, lorsqu'on exerce un droit; en l'exerçant, on ne peut léser le droit d'un autre, et dès lors on n'est tenu à aucune réparation, quelque préjudice matériel qui soit résulté pour autrui de l'exercice de ce droit; enfin, il importe peu qu'en exerçant un droit, on ait eu l'intention de nuire à autrui, car ce n'est pas le mobile de l'auteur du fait dammageable qui décide s'il y a délit ou

non. . . Un concert à l'effet de faire une chose licite ne saurait être illicite. . . La coalition est un droit, et . . . les amendes, interdictions et proscriptions ne sont que des manifestation tangibles et licites de ce droit mis en action.

The Court of Appeal of Grenoble, in its confirming judgment, after laying down that the abrogation, by the Law of 1887 on *Syndicats*, of the article (416) of the Penal Code which punished concerted action in restraint of trade and industry, deprived such action not only of its penal, but of its tortious, character, went on to say that—

La démarche du syndicat . . . parait avoir été déterminée par des considérations d'intérêt professionel, et non par des sentiments d'hostilité et de malveillance contre Joost.

This passage suggests that if the Court had thought the reasons of the defendants sufficiently improper, it would have considered their impropriety a ground of liability.

Owing to the public interest and importance of the case, the Procureur-Général took part in the proceedings before the Court of Cassation, and delivered a speech in which he argued strongly in favour of the general principle of the relevancy of motive.

"S'il est, en effet, permis," he said, "d'user de son droit, pour la protection et la sauvegarde d'un intérêt légitime, et quel que soit le préjudice qui doive en résulter pour autrui, l'usage d'un droit cesse d'être licite, et engendre une action en dommages—intérêts, lorsqu'il a pour unique mobile la volonté de nuire à autrui. Vous le décidez sans hésitation lorsque, par example, on intente un procès dans le seul but de nuire à son adversaire; vous le décidez également dans tous les cas analogues."

This argument is open to the criticism that it is too narrow. The motive under discussion, as in the English case, was not one of pure malevolence towards the plaintiff: if it was to be held improper, it must be on a broader ground. The formula suggested by the Procureur-Général—"pour la protection et la sauvegarde d'un intérêt légitime"—provides such a ground. It may be, and was, well argued that, while it is permissible for a syndicate to bring all the weight of its organisation to bear in order to obtain from an employer better wages or conditions of labour, the intention to compel persons to enter the syndicate against their will is improper, and taints otherwise lawful action. This is the principle stated in the *arrêt* of the Court of Cassation :—

Si, depuis l'abrogation de l'Article 416 C.P., les menaces de grève . . . sont licites quand elles ont pour objet la défense des intérêts professionnels, elles ne le sont pas, lorsqu'elles ont pour but d'imposer au patron le renvoi d'un ouvrier, parcequ'il s'est retiré de l'association et qu'il refuse d'y rentrer.

The Court of Appeal of Chambéry, to which the case was referred, added the remark that, in the circumstances of the case, the boycotting of Joost could have no influence on wages or conditions of work.

The principle for which the *Affaire Joost* is the leading case has been subsequently adopted in the following among other cases:—

In the *Affaire Oberlé* (D.P. 94, 2, 305), damages were given against a *syndicat professionel* for procuring (by threat of strike) the dismissal of a recalcitrant member. The wrongfulness of the reason for the syndicate's action was in this case put on the ground that it had acted in its corporate capacity for an object which lay outside the limits laid down by the law authorising the incorporation of trades unions.[1] The same line of argument was adopted in the *Affaire Burnichon* (D.P. 95, 2, 310).

The judgment in the *Affaire Bounissent* (D.P. 95, 2, 312), in which the plaintiff sued a syndicate for procuring his dismissal as a punishment for disobedience to the syndicate, contains the following burst of eloquence on the enormity of admitting the legality of the syndicate's action:—

> [Ce serait] confisquer, au profit exclusif des syndicats, qui deviendraient ainsi, contre toute raison et toute justice, les maîtres absolus de chaque métier, le droit individuel du travailleur que nos lois modernes n'ont jusqu'ici cessé de protéger avec un soin jaloux, et rétablir, cent ans après la Révolution française et par l'abandon de l'une de ses conquêtes les plus bienfaisantes, l'oppression des anciennes maîtrises et jurandes dans ce qu'elle avait de plus odieux et de plus tyrannique.

This judgment gave the plaintiff £200 damages, and was confirmed by the Paris Court of Appeal.

The tortious character of boycotting has not been recognised only in cases in which the defendants were trades unions. The following example comes from Belgium, which is in the closest legal contact with France:—

In *Dapsens* c. *Lambret* (Sir. 90., 4, 14), the defendant was an employer of labour and the proprietor of an hotel. Desiring, for avowedly political reasons, to injure the plaintiff, who was a brewer, he forebade his employees on pain of dismissal to deal with the plaintiff, and made the boycott a condition in a sale of the hotel. In giving judgment for the plaintiff, the tribunal of Dinant, gave as one of its reasons that

> l'achalandage [goodwill] constitue un des éléments de la propriété industrielle; que l'Art. 1382 C.C. condamne les atteintes qui pourraient y être portées méchamment en dehors d'une libre et loyale concurrence *à laquelle des tiers peuvent aussi très-légitimement s'intéresser.*

The reference to the interests of the public seems to be a fruitful suggestion.

An interesting case in which the propriety of the reason for a boycott

[1] This argument contains the very curious suggestion that where there is *damnum*, the *injuria* may be added by the fact that the author of the act complained of, being a moral personality, has acted *ultra vires*. Conspiracy to do a lawful act is not in principle unlawful in France, even for non-incorporated bodies.

was admitted to excuse it was that of *Reding* c. *Kroll* (Sir. 98, 4, 16), decided by the tribunal of Luxembourg in 1896. In this case the defendants had forbidden their workmen to resort to the plaintiff's *cabaret*. It was admitted to be a defence to the action that the plaintiff had not disproved the defendants' allegation that this order was necessary for the maintenance of discipline and sobriety in the defendants' works.

The French Courts have now definitely undertaken the task of fixing the limits of the reasonable exercise of certain important classes of rights. Space would scarcely permit of an exhaustive examination of the practical bearings of this line of development, but an examination of French decisions does not tend to remove the misgivings expressed by English judges as to the policy of enquiring into the reasons for which rights are exercised in one way rather than another. At the same time, the authority which that policy at presents enjoys in France cannot fail to be impressive, strengthened as it is by an emphatic though narrow article in the new German Civil Code.[1]

Probable Future Applications of the Principle.—A logical application of the principle would result in a complete remodelling of the civil law, narrowing all rights until they corresponded closely to the dictates of morality as understood by judges and jurymen. It may be anticipated that the future of French law on the subject will be confined to the determination of a set of fairly definite and inelastic rules in various branches of the law. The limits of the right to boycott may be somewhat rigidly fixed. That a satisfactory code of rules as to dismissal of servants working without hardship, will be found, it is more difficult to believe. Still more difficult is it to imagine that it will be possible to trace the limits of reasonable use of property. In certain directions this may be done: the reasonable use of wells may perhaps be regulated under the new law; workable rules as to unnecessary interference with views may be established. But is it to be regarded as unreasonable to prevent my neighbour's use of a footpath, in order to compel him to purchase a servitude, or to spoil his view by granting building leases, when he is prepared to compensate me on a reasonable basis for desisting? The subject is, in fact, still only in its infancy, and the developments of the next few decades will assuredly be of the greatest interest to lawyers.

[1] Art. 226: "Die Ausübung eines Rechtes ist unzulässig, wenn sie nur den Zweck haben kann, einem Anderen Schaden zuzufügen."

THE RULE OF DÁMDUPAT.

[*Contributed by* FRAMJEE R. VICAJEE, ESQ., *of the Bombay Bar.*]

1. **Muhamadan and Hindu Rules of Interest on Loans.**—Among the legacies bequeathed by the Great Mogal to his present successors in the empire, for the administration of its laws, were two texts contained in the sacred classics of the Muhamadan and Hindu communities relating to the law of interest.[1] The Muhamadan text, reproduced from the Qurân[2] in the *Hedaya*,[3] prohibited, as between the Faithful, the creditor from claiming against his debtor *any interest whatsoever* on money lent, whether such interest was recoverable, according to our modern notions of it, as debt or damages. In the actual practice, however, of the times which immediately preceded the organisation of the British system of justice, this prohibitive rule was regarded as of no legal force. "The Musalman Government of India," says Phear J. in a leading decision on that subject, "appear to have tolerated, directly or indirectly," its breach. "As a moral precept," he adds, "it will no doubt always be influential with those who acknowledge its authority; but I think that, as a part of the Municipal Law, if it ever had existence as such, it has long been obsolete."[4] In the same case Markby J. makes a similar observation:—

"Ever since," says he, "our Courts have been established, and apparently long before, the custom of taking interest as between Muhamadans has been recognised and enforced."[5]

[1] In the Grant, dated August 12th, 1765, of "the Diwani, or Receivership, of Bengal, Bahar, and Orissa, which formed part of the Mogal empire, by its titular sovereign Shah Atum II., the East India Company understood that the administration of justice was to remain vested in the Native Courts as theretofore (Cowell's *Tagore Law Lectures* [1872] *on the Constitution of the Courts, etc., in India*, p. 26). But earlier than that (in 1726) the Charter of King George I. (13 Geo. I.), which established the Mayor's Court at Madraspatam, Bombay, and Calcutta, provided that suits between Indian natives at Madras should be determined by themselves *according to their own law*, unless they chose to submit to the judgment of the (Mayor's) Court (see Sergeant Spankie's citation *in arguendo* in *Mayor of Lyons* v. *East India Company* [1836–7], 1 Moo. Ind. App., at p. 245). Madras and Bombay were not acquired from the Mogal emperors.

[2] *Sacred Books of the East*, vi. (1880), part i., ch. ii. [275], p. 44.

[3] Hamilton's *Hedaya*, by Grady (2nd ed., 1870), pp. 303 and 607.

[4] *Miakhan* v. *Bibijan* (1870), 5 Ben. L.R. 500 (507).

[5] *Miakhan* v. *Bibijan* (1870), 5 Ben. L.R. 500 (508).

The other text concerns contracts of the Hindu community among its members *inter se*, and prescribes what is known as the "rule of Dámdupat."

2. **Hindu Rule of Dámdupat.**—Most of the *placita* on which that rule is based are contained in the writings of Manu, Vishnu, Vrihaspati, Gautama, Nárada, and other sages of the "Sacred Law." Of these the most important are Manu and Gautama, who state the rule in the simplest and most general terms:—

"In money transactions," says Manu, "interest paid at one time (not by instalments) shall never exceed the double of the principal" (*The Laws of Manu*, viii. 151).[1]

The commentators on this text explain it to mean that the interest with the principal shall not exceed double of the sum lent.[2]

Gautama states the rule in a more explicit way:—

"If [the loan] remains outstanding for a long time, the principal may be doubled, after which interest ceases" (*The Institutes of Gautama*, xii. 31).[3]

Several of these leading texts are collected together by, among other annotators, the author of *Vyavahara Mugukha*,[4] the paramount authority in Gujerat and the city of Bombay, where the rule under consideration is deeply discussed. But by far the most exhaustive collection of them is made by Jagannát'ha Tercapanchána, compiler of the Sanskrit texts of which Colebrooke's *Digest*[5] is the English translation. He considers the law "involved in apparent contradiction," and "intricate."[6]

3. **Place of the Rule in the Early Law of Creditor and Debtor.**—To fix the exact place which is occupied in the general system of Hindu law in force at the present day, regard must be had to the state of that law as to creditor and debtor in Manu's Code[7] itself, and also in the laws of other early societies, of which we have some record still surviving. Manu sanctions five methods, including a suit at law, by which a creditor may recover property lent. The use by him of personal "force" is one of them; and it is explained by the commentators to mean "forced labour' from the debtor, or a "forcible sale of [his] property."[8] Elphinstone

[1] *Sacred Books of the East*, xxv. (1886), p. 280.

[2] *Sacred Books of the East*, xxv. (1886), p. 280.

[3] *Sacred Books of the East*, ii. (1879), p. 239.

[4] See Whitby Stokes' *Hindu Law Books* (1865), pp. 110–13, ch. v., s. 1.

[5] Colebrooke's *Digest* (4th ed.), 1, s. 1, pl. 2; 2, s. 1, pl. 2 and 30; s. 37, pl. 35 A whole chapter, extending over sixty pages, of the first volume is devoted to the subject of "Loans."

[6] These remarks are taken from a citation in *Nobin Chunder* v. *Romesh Chunder* (1887), 14 Cal. 781 (790).

[7] The date of the Code is variously stated; the latest researches place it between the second century B.C. and second century A.D. (see Mayne's *Hindu Law* [1892], chap. ii., s. 21, p. 21).

[8] The *Laws of Manu*, viii. 48–9, in the *Sacred Books of the East*, xxv. (1886), p. 262 and note to pl. 49 at foot; also pl. 48 and 50.

in his comments on this part of Manu's Code, remarks that

this law operates so strongly in some Hindu states that a creditor *imprisons* his debtor in his *private house*, and even keeps him for a period without food and exposed to the sun to compel him to produce the money he owes.[1]

In his account of civil justice, Cowell says that the administration of it was carried on through native agency till 1772,[2] in the Company's provinces of Bengal, Bahar, and Orissa; and, quoting Mills' *History of India*, he says that

under the ancient Government the English, as well as other European settlers, instead of demanding payment from a reluctant debtor through the Courts of law, seized his person and confined it till satisfaction was obtained.[3]

As to the state of law in the Roman Empire, Grote, on the authority of Von Savigny, states that

the *private prison*, with adjudicated debtors working in it, was still the appendage to a Roman money-lender's house even in the third and fourth centuries of the Christian era, though the practice seems to have become rarer and rarer.[4]

So Manu's rule, as forming part of Manu's law of creditor and debtor, was strictly a means of preventing that law from operating harshly on the debtor after he had concluded his contract in the ordinary, legitimate, and *bonâ fide* way, or, by diminishing the burden of the debt, of reducing its hardship. As originally conceived, it was, it seems, not a rule for affording relief against the use of force, fraud, undue influence, etc., practised by the creditor at the time the debt was contracted, but a sort of relief law calculated to ameliorate the after-effects of a lawful contract, rather than to supply a ground for setting aside an "unconscionable bargain" in the formation of it.

4. **Progress of the General Statutory Law of Interest in India and England.**—During the Mogal regime there was a period (of which there is still some faint evidence preserved) in its legal history when the rules of Muhamad and Manu were held to be of equal force in their respective spheres of operation. Taking that period into consideration in tracing the parallel lines of development which the general law of interest followed among the different communities of India, they will be found to represent at different points in the lines different stages of progress. It seems that

[1] *History of India*, by Mountstuart Elphinstone (4th ed., 1867), p. 31.

[2] Lecture II.: "Early History," in *The Tagore Law Lectures* (1872), by Herbert Cowell (1872), p. 33.

[3] Lecture II.: "Early History," in *The Tagore Law Lectures* (1872), by Herbert Cowell (1872), p. 32.

[4] Grote's *History of Greece*, vol. ii. (1862), p. 355. The whole Appendix to part ii., ch. xi., gives an interesting sketch of the laws of debtor and creditor among the ancient Greeks and Romans, and the French before the Revolution of 1789.

the history of that law,[1] which has more or less pursued the trail of the English law on that subject, has run roughly through three stages in its evolution; and these stages, like Comte's *trois états* in the law of human progress, are more or less successive in their historical order. They may, in a somewhat arbitrary classification, be distinguished thus:—

(1) The stage in which the right is forbidden by legislation or usage;

(2) The stage in which "usury laws" are enacted and graduated rates of interest fixed; and

(3) The stage in which the "usury laws" are repealed *en bloc.*

(*a*) *In the Mofussil of India.*—The first stage ends with, or at some time prior to, the close of the Mogal administration. The second stage begins with the formation of British judiciary laws, and closes with the legislation of 1855. The third dates from 1855, and is still in progress. The Qurânic rule of the first stage corresponds with the English laws of Edward the Confessor, which under the ecclesiastical sanctions of the canon law forbade the taking of interest. The second stage of the Indian law is noticeable for the extension of the Dámdupat principle, so far as it diminishes the amount of recoverable interest, to contracts of all communities, whether they be Hindu or non-Hindu, in the Courts governed by the Company's Regulations.[2] At the close of the last and the commencement of the present century the "provinces" of Bengal, Madras, and Bombay were, with the exception of the Presidency towns, served by district Legislatures,[3] each of which made its own enactments, at its own convenience, within its own jurisdiction, as regards usury. The earliest law which regulated the *rates* of interest for the Mofussil was, it seems, the Bengal Regulation 15 of 1793. S. 6 provided that if the interest at "the rates allowed by the Regulations should accumulate so as to exceed the principal, the Courts were not, except in certain specified cases, to decree a greater sum for interest than the amount of such principal." In sustaining that enactment in a case in which both parties were Hindus, Prinsep J. laid down the *dictum*, which has always been followed as sound law, that "this [rule] was not declared to be a principle of Hindu law applicable only to Hindus, but was a statutory provision embracing *all persons* contracting in the Mofussil."[4]

[1] Some of the materials for this part of the subject are taken from a short sketch of the history of interest law in a recent work by Mr. Edmund Upton, of Calcutta, on that subject, entitled *Handbook on the Law of Interest on Debts and Loans in India* (1900), ch. i.

[2] For a list of the Regulations in force in the "provinces" of Bengal, Benares, Madras, and Bombay at this period, see the Schedule to Act 28 of 1855; and for cases thereon, Morley's *Digest*, vol. i. (1850); Titles: *Interest*, pp. 353, *et seq.*, and *Usury*, pp. 607, *et seq.*; and also vol. i., New Series (1852), same titles, pp. 192 and 386 respectively.

[3] The power of provincial Governments to legislate for their respective provinces was taken away by 3 & 4 Will. IV., c. 85, and revived, with certain modifications, by 24 & 25 Vict., c. 67.

[4] *Suriva* v. *Sirdhary Lall* (1883), 9 Cal. 825 (827).

The Madras Regulation 34 of 1802, s. 4, was of the same tenor; and a similar construction was put upon it by the High Court of that Presidency.[1] The Bombay Regulation 1 of 1814 contained also a like provision (s. 4); and "the advancement of commerce and security of property" were, in the preamble to its opening section, recited as the economic ground for determining the rate or rule of interest. In a subsequent Regulation 5 of 1827, which fixed what was the lawful rate for all classes, Hindu or non-Hindu (ss. 10 and 11), it was further declared that "the Regulation [was] not meant to interfere with the rule of Hindu law" (s. 12).[2] It is a curious fact that while the second stage of the law covered a little more that fifty years of India's progress—the first half of the nineteenth century—the corresponding stage in the history of English law occupied some three hundred years from the Statute of Elizabeth (13 Eliz., c. 8). During the whole of that period the "usury laws" were in full and continuous operation, when the term of their temporary repeal by Edward VI. (5 & 6 Edw. VI., c. 20) is excluded. These Statutes reduced the legal rate, fixed in 1546 at 10 per cent., step by step to 8, 6, and ultimately to 5 per cent. The third and final stage in the evolution of the interest law in England commences with the Statute 17 & 18 Vict., c. 90, which was the net outcome of the new economics of the school of Adam Smith and the studies on the *Defence of Usury* by Bentham in particular. That Statute maintains the absolute "sanctity of contracts"; and in so far as it asserts the principle of a complete freedom in law as to stipulated rates of interest, it is the English archetype, so to speak, of the Indian Act 28 of 1855.

(*b*) *In the Presidency Towns.*—So far the general history of the statutory law of interest in the Mofussil of India. In the presidency towns there has been a different system adopted. In 1726 the Charter of George I. (13 Geo. I.) introduced there the English law, common as well as statutory, including the fixed rates of interest above referred to, so far as the same was applicable to the circumstances of Indian life.[3] In 1781 the Statute 21 Geo. III., c. 70, confined within the city of Calcutta the ordinary original civil jurisdiction of the Supreme Court, which, since its establishment in 1773 by the "Regulating Act" (13 Geo. III., c. 63), had extended indifferently over Europeans and natives inhabiting the provinces of Bengal, Bahar, and Orissa. That Statute, in respect of "all matters of contract and dealing between party and party," withdrew the English law from its application to Hindus, and in lieu thereof provided that suits between them should be determined by "the laws and usages of the Gentoos," etc.[4] In 1800

[1] *Annaji Rau* v. *Ragubai* (1870–1), 6 Mad. 400.

[2] *Rámkrishnábhat* v. *Vithaba* (1865–7), 3 Bom. H.C., A.C. 25 (26); *Khushalchand* v. *Ibrahim* (1865–7), 3 Bom. H.C., A.C. 23.

[3] The clause is extracted bodily in Master Stephen's report in *Freeman* v. *Fairlie*, 1 Moo. Ind. App., at p. 311.

[4] 37 Geo. III., c. 142, empowered the king to establish Recorders' Courts in Madras and Bombay, and by s. 13 the Courts were to determine suits "in the case of Gentoos" by their laws and usages.

the Charter of George III. (41 Geo. III.), and in 1823 that of George IV. (8 Geo. IV.), established like Courts with similar powers for the city of Madras (Clause 22) and the island of Bombay (Clause 29) respectively.

5. **Case Law of the Rule.**—Taken in connection with Act 28 of 1855, these several Charters have tended to create an anomalous[1] state of interest law as regards Hindus in some of the Presidency towns on the one hand, and parts of the Mofussil on the other; and the anomaly is further accentuated in the case law of both. The trend of that case law is threefold:—

(1) It has defined by degrees the local area within which the Dámdupat doctrine now operates;

(2) It has restricted that operation to cases of secured, as distinguished from unsecured, claims, or simple money claims from mortgages; and

(3) It has conferred the benefit of the rule only to Hindu debtors who may also be defendants in suits filed by Hindu creditors.

(1) *Its Local Area.*—In determining the territorial sphere of the rule, the decisions mainly turn upon the construction and effect of Act 28 of 1855. In an early case the Bengal High Court, construing that Act in connection with the Bengal Act 6 of 1871, s. 24, regarded the rule as not in force in the Mofussil of Bengal.[2] In a subsequent case that Act was considered by itself; and following a decision already recorded by the same Court, it held that Act 28 rescinds the Regulation of 1793; and, inasmuch as s. 6 of the Regulation was a statutory provision independent of the Hindu rule, embracing all contracts, whether between Hindus or non-Hindus, without distinction, that rule is inoperative in Lower Bengal.[3] As to the decisions in the North-West Provinces and the Madras Presidency (including, probably, the city also) there is "a complete consensus of opinion" in the same direction.[4] The law, however, so far as it affected the city of Calcutta, was differently handled. A full Bench of the High Court in an appeal on the original side held, upon an exhaustive review of prior rulings, that Act 28 "dealt exclusively with the (allowable) *rate* of interest," and the rule of Dámdupat, as between Hindus within the city of Calcutta, being more than "a mere moral precept," and applicable to cases other than those of "stipulated interest," was, in the absence of any enactment to the contrary, the governing rule.[5] In this view of the Act the full Bench followed Phear J., who considered the *rate* of interest to be "the sole object" of it "from the

[1] See *per* Wilson J. in *Nobin Chunder* v. *Romesh Chunder* (1887), 14 Cal., at p. 790, and Cowell's *Tagore Law Lectures* (1872), pp. 51–5, as to the conflict of authorities generally created by the Statutes and Charters and the Company's Regulations.

[2] *Deen Doyal* v. *Kylas Chunder Pal* (1875), 1 Cal. 92.

[3] *Surjya* v. *Sirdhary Lall* (1883), 9 Cal. 825.

[4] *Annaji Ran* v. *Ragubai* (1870–1), 6 Mad. 400, and *Kuar Lachman Singh* v. *Pirbhu Lall*, 618 W.P. 358, cited in *Surjya* v. *Sirdhary Lall* (1883), 9 Cal. 825 (828–9) See *Shobat* v. *Dham*, 2 Agra II., 194.

[5] *Nobin Chunder* v. *Romesh Chunder* (1887), 14 Cal. 781.

beginning to the end"; and as to the exact function of the rule in question, he proceeds to say that

> there may be laws which in strictness relate to usury, yet do not meddle directly with the rate of interest, such as the law limiting the period within which an action for arrears of interest must be brought by reference to the amount to be recovered—*e.g.*, *Manu*, s. 151, chap. viii. . . . This, in substance, is a law for the limitation of suits.[1]

In Bombay the Courts have held that Act 28, by repealing s. 21 of Regulation 5 of 1827 or otherwise, did not alter the rule in the Mofussil;[2] and either the Bombay Regulation 4 of 1827, s. 26, or the Supreme Court Charter, Clause 29 (as the case required), was also made the basis of the decisions which saved the rule within the jurisdiction of those Courts.

(2) *Its Application to Unsecured Loans.*—Wherever the rule is made applicable, distinction has been drawn between mortgages and unsecured loans. In *Dhondu* v. *Narayan*,[3] Sausse C.J. holds that "if the principal remain outstanding, and the interest be paid in smaller sums than the amount of the principal money, there is *no limit* to the amount of interest which may be thus received from time to time." Hence it follows that in cases in which the debtor *can* pay, the creditor who is desirous of excluding the operation of the rule has it in his power to call in such sum or sums of money by way of interest from time to time as may leave the ultimate balance of unpaid interest recoverable in his suit, short of, or equal to, the principal sum lent by him. Such interest recovered out of Court may either be obtained in cash or embodied in a fresh document executed in adjustment of the interest due, by *capitalising* the same, notwithstanding the injunction of Manu against compound interest. An instance of that sort occurred in a very recent case in Bombay.[4] Subsequently to the date of their first loan bond, the parties executed a second document in adjustment of the principal sum originally lent and the interest due thereon. The balance of the subsequent, and not the amount of the original, bond was taken to be the correct measure of the interest recoverable by the creditor. This view of the rule is in line with an analogous ruling in *Blackburn* v. *Warwick*,[5] under nearly similar circumstances, when the English law was in its corresponding second stage of growth. In that case the mortgagee brought in his account made up with periodic rests, and the adjustments were confirmed by fresh documents. Alderson B. decreed the adjusted sum, holding that there was nothing "usurious" in it or "contrary to equity and common sense."

[1] *Miakhan* v. *Bibijan* (1870), 5 Ben. L.R. 500 (505). See further to the same effect, *Ramconnoy* v. *Johur Lall Dutt* (1880), 5 Cal. 867 (868).

[2] *Hakmá* v. *Meman Ayab* (1870), 7 Bom. H.C., A.C. 19 (21).

[3] (1862-5), 11 Bom. H.C., A.C. 47 (49).

[4] *Sukhlal* v. *Bapu* (1900), 24 Bom. 305.

[5] (1836), 2 Yo. and Coll. 92.

(*2b*) —— *to Mortgages.*—As regards mortgage accounts the rule varies in its application according as the mortgagee is or is not in possession of the mortgaged property. Without possession, he is substantially in the position of a simple contract creditor.[1] The same would also be the case where the mortgagee, though in possession, had agreed to give credit for the produce of his security at a *fixed* sum from time to time, and there was no account to be rendered of his receipts, except the calculation of the balance of interest periodically due to him.[2] But where the mortgagee is in possession and has his accounts to pass of rents and profits, he is entitled to the utmost benefit of his security, and the rule has no application.[3] As finally settled by a full Bench the law stands thus: Where the terms of a mortgage-deed necessitate the existence of an account current between the mortgagor and the mortgagee, the rule is excluded, the liability to account on the part of the mortgagee being made the test of exclusion.[4] In Calcutta it was likewise excluded where, on taking the accounts, it appeared that, though at the date of the registrar's report the balance of principal and interest found due at foot thereof was less than twice the principal, it was in excess at the date when the decree became final.[5]

(3) *Its Operations in Suits against Defendant Mortgagors.*—Lastly, it is only in suits between Hindus where the mortgagor in possession is a defendant that the rule obtains in full force. So that, where a Muhamadan mortgagor sued the heirs of his Hindu mortgagee, he was denied the benefit of the rule.[6] The *ratio* of the judgment was that, as between the same parties, the law would not permit two distinct modes of charging interest on the same account, one in redemption, and the other in foreclosure, suits wherein their relative positions were reversed. Similarly, where the Muhamadan mortgagor assigned his equity of redemption to a Hindu, and at the date of the assignment the interest (Rs.122, 15, 10) exceeded the principal (Rs.61), the creditor in his suit against the assignee was held entitled to receive down to the date of the assignment all his interest in arrear, it being inequitable that the mortgagor by his assignment could prejudice his creditor by releasing the land from any charge that existed on it at that date.[7] In a converse case the same principle was followed. A Hindu created a possessory mortgage of lands in 1843 in favour of a Muhamadan. All the profits were to be appropriated in lieu of interest,

[1] *Balcrushia* v. *Hari* (1891), 15 Bom. 84 (85); *Hari* v. *Balambhat* (1885), 9 Bom. 233; *Ganpat* v. *Adarji* (1879), 3 Bom. 312 (333); *Ramchunder* v. *Bhimra'v.* (1876–7), 1 Bom. 577 (580).

[2] *Narayan* v. *Satraji* (1872), 9 Bom. H.C., A.C. 83 (86), followed in *Narayan* v. *Rangubai* (1880), 5 Bom. 127 (129).

[3] *Nathubhai* v. *Mulchand* (1868–9), 5 Bom. H.C., A.C. 196.

[4] *Dhondshet* v. *Ravji* (1898), 22 Bom. 86, and *Gopál* v. *Gangárám* (1896), 20 Bom 721, over-ruling *Ganesh* v. *Kishavram* (1891), 15 Bom. 625.

[5] *Lall Behary* v. *Thacomoney Dassee* (1896), 23 Cal. 899.

[6] *Dawood* v. *Vallabhdas* (1884), 14 Bom. 227.

[7] *Harilal* v. *Nágar* (1891), 21 Bom. 38 (41).

and a fixed sum of Rs.12 a year was made payable to the mortgagee. In April, 1880, the equity of redemption was brought in execution of a decree against the mortgagor by a Muhamadan, who in 1893 sued for redemption. Parsons J. decided that so long as the mortgagor was a Hindu, the rule applied; and as soon as the interest equalled the principal, there was a stop to further interest accruing against him. But when the Muhamadan became the debtor, the stop was removed, and interest would at once begin to run beyond the limits of the rule.[1]

6. **Conclusion.**—Such is the doctrine of Dámdupat in its modern form. As has been seen, it is a remnant of a past phase of the general law of interest, which has survived to a great extent in the case of a certain class of Hindu contracts, but has disappeared, with the sweeping repeal of "usury regulations," in all other cases. So far only as it reduces the ultimate amount of recoverable interest from the debtor, it is a part of the "usury law" of the Hindus; but so far as the "usury law" involves in itself elements sufficient to set aside a contract, it is not an essential part of it. In short, it has no necessary connection with any *illegality* affecting the formation of contracts,[2] though Hindu commentators on the rule have expressed serious differences of opinion as to whether it affected "the limitation of interest" or "the invalidity or immorality of usurious loans."[3] The tendency of modern case law is to regard it as a "rule of limitation,"[4]—a branch, so to speak, of the procedure law, as between Hindus, rather than a part of the substantive law of contracts, with the additional advantage that the ordinary Acts of limitation do not, in certain conditions, contest its operation.[5]

[1] *Ali Sáheb* v. *Shabji* (1895), 21 Bom. 85.

[2] *Ramconnoy* v. *Johur Lall Dutt* (1880), 5 Cal. 867 (868).

[3] Harrington's *Analysis of the Bengal Regulations*, part i., s. 3, p. 181, quoted in the F.B. judgment in *Nobin Chunder* v. *Romesh Chunder* (1887), 14 Cal. 790.

[4] *Miakhan* v. *Bibijan* (1870), 5 Ben. L.R. 500; *Ramconnoy* v. *Johur Lall Dutt* (1880), 5 Cal. 867 (868).

[5] *Hari* v. *Balambhat* (1884), 9 Bom. 233 (235), and *Gaupat* v. *Adarji* (1877), 3 Bom. 312 (333). In respect of another branch of the procedure law—*i.e.*, in the execution of decrees—it is held not applicable to the sum to be recovered. *Balcrushia* v. *Gopal* (1875), 1 Bom. 73; and see also *Dhondshet* v. *Ravji* (1898), 22 Bom. 86, as to the Court's discretionary power under s. 209 of the Code.

VALIDITY OF NATIVE CUSTOMS IN BRITISH COURTS.

THE Colonial Office has forwarded to us several interesting judgments delivered in the Supreme Court of the Colony of Lagos. One of these judgments, in the case of *Bakare* v. *Denton*, decided by Sir Thomas Rayner C. J., involved important questions as to the nature of territory adjacent to that Colony over which the British Government exercises influence, the validity of native customs, and ratification by Governors. No report having been, so far as we are aware, published in this country, we print the chief passages of the judgment.

The plaintiffs, who alleged that they were British subjects trading with Ilorin, a country lying to the north of the Yoruba river and between it and the Niger, claimed damages for wrongful seizure of their goods at Oyo, in the Yoruba country. The defendants, who included Captain Denton, the Secretary of the Colony, pleaded, *inter alia*, that the goods were seized by orders in 1896 of the then Governor of Lagos. Oyo, it was admitted, was outside the Colony of Lagos, and beyond the jurisdiction of the Court. Assuming the plaintiffs to be British subjects, the learned judge observed:—

Jurisdiction as to Torts.—The defendants, however, contend that this action cannot be maintained unless the act complained of was wrongful, both according to the law of this Colony and the law of Oyo. This contention, I think, is clearly correct. In the case of *Phillips* v. *Eyre* (L.R. 6 Q.B. 1), Willes J. lays down the rule as follows:—

"As a general rule, in order to found a suit in England for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in England. . . . Secondly, the act must not have been justifiable by the law of the place where it was done."

This decision is followed and approved in *The M. Moxham*, 1 P.D. 107, and by the Court of Appeal in *Machedo* v. *Fontos* [1897], 2 Q.B. 231. It therefore follows that if the seizure of the goods in question is lawful by the law of Oyo, no action will lie; and the defendants set up as one of their defences to this action that the act complained of was lawful by the law in force at Oyo.

The defendants allege that for some time before 1896 there had been serious troubles between the people of Ilorin and the people of the Yoruba country, which troubles, they allege, eventually led to a state of war; and that in consequence of those troubles, the native authorities, with the concurrence of the Governor of Lagos, resorted to the native expedient, usual in such cases, of closing the roads against the Ilorins, and of allowing no one to pass from or to Ilorin.

Native Law—Alleged Barbarous Customs.—The defendants allege that the plaintiffs' goods were seized because the plaintiff Bakare Eyiowuawi attempted to pass from Ilorin with them after the closing of the roads, and that such seizure was justified by the native law of the Yoruba country. The plaintiffs, however, contend that the native law is barbarous, and ought not to be regarded by this Court; and they further contend that in any case the goods were seized in consequence of the orders of Governor Carter, and not by reason of the law of Oyo.

In order to understand the issue raised by this defence, and the answers to it, it is necessary to enquire, what is the position of Oyo in relation to the English Crown?

Treaties Relating to Yoruba.—This relation is determined in part by two treaties—the first made in June and July, 1886, and executed by most, if not all, of the kings and chiefs of the Yoruba country, including the King, or to use his native title, the Alafin of Oyo. This treaty had for its object the putting an end to the intertribal wars which had long devastated the hinterland of Lagos, but it does not seem to have accomplished its objects; for, it is a matter of history that force had eventually to be resorted to, and in 1892 the Jebu Expedition was despatched by the British Government, and an end put to those wars.

The other treaty was made with the Alafin of Oyo on February 3rd, 1893, after the Jebu Expedition had pacified the country; and it goes a good deal farther than the former treaty. And in it the Alafin undertook to put an end to barbarous customs, to foster trade and religion, and not to cede any territory to, or make any treaty with, any foreign Government without the Queen's consent; and in consideration of his performing these conditions, the Governor of Lagos undertook to make the Alafin an annual "present" of £100. A somewhat similar treaty was made on August 15th, 1893, with the chief or "Bale" of Ibadan, in which it was recognised that the Alafin of Oyo is the "King and head of Yoruba Land," and the treaty of February 3rd was referred to, and the Bale and his chiefs undertook to carry it out within the Ibadan territory. Although the Alafin is recognised as the head of Yoruba Land, it does not appear that he has much, if any, authority over Ibadan, which is practically independent of him, and his headship appears to be little more than titular.

Yoruba Foreign Territory.—It is clear from the treaties that the internal government of Yoruba Land is left in the hands of the native rulers, the Queen retaining only the right to assist or advise them, and Yoruba Land is therefore strictly a foreign country. At the same time the British Government does exercise a certain amount of control over the native rulers by officials called "Residents," who are stationed in different parts of the country, and who assist and advise the native rulers. In this way, gradual improvement is being effected in the methods of government, the more barbarous native usages are being abolished, and the country generally opened to civilising influences. But whatever is done, is done in the name and under the authority of the native rulers, and not in the name of the Queen. No doubt, in this indirect way, the Queen's government is able to exert nearly as much influence upon the government of the country as if she had declared a protectorate over it. But no protectorate has been declared, and it must therefore be treated as foreign territory.

Closing of Roads.—I now pass on to consider the circumstances which led to the closing of the Ilorin roads in 1896, upon the legality or illegality of which I have to decide. It appears that for a very long time there had been a feud between the Yoruba people and the Ilorin people, and a desultory warfare had been carried on between them, accompanied by the raiding and burning of towns and villages. The

Yorubas were encamped at Ikirun, a place close to the Ilorin frontier, and from there carried on the raids and other operations incident to native warfare. In 1893, however, Sir Gilbert Carter got the Yorubas to break up the camp at Ikirun and return to their homes; and an attempt was made to open communication with the Ilorins, and to induce them to desist from the war. This does not appear to have been successful, for the Ilorins still continued to make raids into the Yoruba country, and in order to protect the Yorubas, who at the Governor's request had broken up their camp at Ikirun, detachments of Houssas were stationed at places near the Ilorin frontier. The Ilorin country is within the territories of the Royal Niger Company, and is not within "the sphere of influence" of the Governor of Lagos.

What was the original cause of the quarrel between the two peoples does not appear, but in its later stages the settlement of the boundary between the two countries seems to have been the bone of contention. In 1894, Colonel Lugard, representing the Royal Niger Company, and Captain Bower, the then Resident at Ibadan, the senior British official in Yoruba Land, met at Odo Otin, near the Ilorin frontier, and agreed upon a boundary. The Ilorins, however, refused to accept this boundary, and it is said that the reason of their refusal was that it would place outside their territory certain Yoruba towns in which they had hitherto been accustomed to raid for slaves.

The country continued in a very disturbed and unsettled state, and the Ilorin army was out constantly threatening to attack the Yorubas. Towards the end of 1895 Sir Gilbert Carter went up to Oyo, apparently with the intention of going on to Ilorin, in order to try to settle the matter, and put an end to the disturbed state of the country. He had sent on in advance an influential Mohammedan named Sumonu Okete, whom he hoped would be able to influence the Ilorins, but he was stopped on the way and was not allowed to proceed, and was told he would be killed if he attempted it. He returned to Ogbemosho, a Yoruba town near the Ilorin frontier, and there he met Sir Gilbert Carter. An Ilorin messenger also accompanied Sumonu Okete, who delivered a hostile message to the Governor, who therefore abandoned the intention of proceeding farther, and went back to Ibadan. It was clearly evident that the Ilorins were determinedly hostile, and that there was no hope of a peaceable settlement, and that something more than negotiations were required to make the Ilorins withdraw their army and cease to raid the Yoruba frontier. It was not possible to send a military expedition into Ilorin, as, Ilorin being within the territories of the Royal Niger Company, such an expedition might have been regarded as an interference with the Company's rights, and therefore defensive measures were the only ones possible.

On his arrival at Ibadan, the Governor held a "palaver" with the chiefs, and Sumonu Okete reported the reception he had met with in Ilorin, and the chiefs thereupon requested permission to go and fight the Ilorins. This, however, was refused, and it was decided to adopt the expedient of closing the roads against the Ilorins. It is not quite clear from the evidence whether it was the Governor or the chiefs who first suggested this course, but at all events it is clear that it was decided on.

It was not disputed that closing the roads was a native custom; abundant evidence was given of the existence of such a custom; and indeed it is so well-known a custom that I think the Court would be justified in taking judicial notice of it, even without evidence being given of it. It is a matter of common knowledge to any one who has been only a short time in this part of West Africa that as soon as hostilities begin between two tribes, they close the roads and allow no one to

pass. It is a matter familiar to every one in this Colony that it was the closing of the roads, consequent upon the frequent intertribal wars, and the consequent interference with trade, and injury to the prosperity of this Colony, which led the British Government to interfere in 1892 and to send up the Jebu Expedition, to which I have already referred. As it was not possible, or at all events not desirable, to send an expedition into Ilorin, it was decided to adopt the native expedient of closing the roads, apparently in the hope that the Ilorins, being isolated in their own country and cut off from all trade with Lagos, would be brought to reason. Whether such a course was wise is a matter upon which opinions may differ. It does not seem to have been successful, and the roads were opened again, before the Ilorins were reduced to order, which was not till the Royal Niger Company had sent an expedition there in February, 1897.

But whether wise or not, the course taken by Sir Gilbert Carter was in harmony with the tradition of British administration in this part of the world. It has always been the aim of British administrators in this part of Africa to interfere as little as possible with native customs, and as far as practicable to govern the people in accordance with their own laws and customs. Inhuman and barbarous customs are of course forbidden, and the harsher incidents of others are modified, but so far as they are in accordance with the dictates of humanity, native laws and customs are recognised and enforced. Even in the Colony of Lagos, where English law, modified by local Enactments, obtains, native customs are by virtue of s. 19 of the Supreme Court Ordinance, 1876, enforced as between natives, unless they are "repugnant to natural justice, equity, and good conscience."

If, therefore, native customs are to be enforced even in Lagos, *à fortiori* they must be recognised and enforced in those parts where English law does not obtain, and where our power is limited to assisting and advising the native authorities. Therefore in concurring in closing the roads, Sir Gilbert Carter was only carrying out the usual policy of acting as far as possible in accordance with native customs, and through the native authorities.

As soon as it was determined to close the roads, notice was given of it in the usual native mode by a bell-man, who announced the fact to the public.

There is evidence that this was done at Ibadan and Oyo, and at the latter place notice appears to have been given twice. The defendant Green, to ensure every one hearing of it, got the Alafin to have the fact again proclaimed when he went there in charge of the Houssa detachment in August, 1896. At the same time the British officers in command of the detachments of Houssas stationed on the frontier were directed by orders from Sir Gilbert Carter to allow no one to pass to or from Ilorin.

Circumstances of Seizure.—Such was the state of affairs when on December 3rd, 1896, the plaintiffs Bakare Eyiowuawi and his wife Sheffi arrived at Oyo, from Ilorin, and their goods were seized. According to the evidence of this plaintiff, he and his wife, with their carriers, went up to Ilorin with goods about December, 1895. He came back to Lagos twice during the next year, and on his second visit heard that there were troubles with Ilorin, and he then went back to Ilorin to fetch the goods and his wife, who had remained there in charge of the goods, and it was on this journey that the seizure took place. The plaintiff Bakare Eyiowuawi alleges that on every occasion that he travelled between Lagos and Ilorin that year he went boldly by the ordinary roads, passing through Ibadan, Oyo, and Ogbemosho, and he says that on no occasion was he stopped, nor did he notice anything unusual in the state of the country, that he saw no Houssas, nor ever heard that the roads were closed. His wife Sheffi gave similar evidence,

as did also one Sumenu, a servant of another of the plaintiffs, Bakare Abibu, who was with them. I may say at once that I do not believe this evidence. It is a matter of common knowledge how rapidly news travels in the interior of this country, and it is impossible for a man travelling as the plaintiff Bakare Eyiowuawi says he did, going along the public roads, and passing through and sleeping at the large towns on the way, not to have heard of such notorious facts as those in question. A large and unusual number of Houssa soldiers were stationed in the country, and it was impossible for him not to have seen them. I am abundantly satisfied that the plaintiff Bakare Eyiowuawi did know of the trouble with Ilorin and of the closing of the roads, and went up and down in spite of that knowledge. I am satisfied that he could not have gone along the public roads on his journeys, but must have avoided the large towns and have travelled by unfrequented by-paths. According to the evidence of Mr. Green, the various gates of Oyo were each in charge of a chief and the chief's men, who then sent to Mr. Green, who sent down some Houssas, and the plaintiffs and their goods were taken up to the Houssa barracks, and they were told their goods were confiscated for passing along the roads after they were closed. Their goods were eventually sold, and the proceeds sent to the Resident at Ibadan, who appropriated them to the Ibadan Prison Fund—a fund raised from native sources, out of which is maintained the prison at Ibadan.

Native Customs, Validity of.—This brings me to the consideration of the answers of the plaintiffs to this defence, namely, that the native custom is barbarous, and ought not to be enforced, and that in any case the plaintiffs' goods were not seized under or by virtue of the custom, but under the orders of Governor Carter.

I will deal first with the contention that the custom is barbarous, and must therefore enquire what, by native custom, are the consequences which attach to an attempt to pass the roads after they have been closed. A good deal of evidence was given by chiefs at Ibadan, on a commission issued to take evidence there, and I am bound to say that the original native custom was as savage and inhuman as can be well imagined. It appears that sixteen days are allowed, after the roads are closed, within which time all those who are in the enemy's country are to return home; after that time, every one, whether friend or foe, who is caught passing along the roads, is seized, and he is either killed or made a slave, and his property is confiscated. Bands of armed men appear to prowl about the country, seizing every one and everything they can. The most that can be said in its favour is, that it is the immemorial custom of the country, and that both sides do the same. The chiefs who gave evidence, however, stated that, since the advent of British influence, people cannot be killed and enslaved.

In addition to the chiefs at Ibadan, evidence as to this custom was given by Sumonu Okete, the influential Mohammedan who went up to Ilorin for Governor Carter. He said he knew the Yoruba customs, and he gave evidence of a much milder state of affairs than that described by the Ibadan chiefs. He said that persons in the enemy's country are allowed to return, but that if any one went up after the roads were closed, he would be punished on his return, and his goods seized and confiscated, and that no trade is allowed between the two places when the roads are closed. Probably the reason for this difference is that Sumonu Okete, being a Lagos man, only knows the custom as practised in the neighbourhood of Lagos. He mentioned an instance of the roads being closed between Lagos and the Egba country, and it may well be that the more barbarous incidents of the custom have fallen into disuse in the country near Lagos, which has for a long

time been under British influence; while in those more distant parts, such as Ibadan, which have only within the last ten years been brought to any great extent under such influence, the old custom has remained unchanged. It was contended on behalf of the plaintiffs that there was no evidence of the custom at Oyo, that the evidence all related to Ibadan; but Oyo is the head of the Yoruba country and I am satisfied that the custom is substantively the same all through the Yoruba country.

Now, if the killing and enslaving of persons caught attempting to pass the roads is given up, I see nothing barbarous or inhuman in the custom. It is not more barbarous to seize and confiscate the goods of such a person than in civilised warfare to confiscate the property of a blockade-runner. I do not think, therefore, that the custom as practised on the occasion in question is barbarous or inhuman. I think the custom was properly and legally put into operation, and was enforced with no more hardship than was necessary to make it effectual, and certainly, in this case, with no more inhumanity than would happen in civilised warfare.

The question now arises, have the plaintiffs acted in opposition to the custom? I am satisfied that the plaintiff Bakare Eyiowuawi knew, on his second journey to Ilorin, that the roads were closed, and he admits that on that occasion he took up a few goods. Knowing that the roads were closed, he yet went up to Ilorin, and instead of at once bringing back his wife and goods, he went on trading with the Ilorins, whom he knew were at war with his own people. Then he made another journey to Lagos, still leaving his wife in Ilorin, and it was only after his third journey to Ilorin that he thought the time had come for them to leave the country. I am of opinion, therefore, that the plaintiffs have brought themselves within the native law, and that their goods were properly confiscated under it.

I now turn to the plaintiffs' other contention, that these goods were confiscated under the orders of Governor Carter and not by reason of the native custom. I am satisfied, however, that Governor Carter was acting in conjunction with the native authorities, and not independently on his own account. It is true that orders were given by him to British officers in the Yoruba country to stop persons passing to and from Ilorin, but it is clear that this was done in aid of the native authorities, in carrying out the closing of the roads. The British officers would of course not take orders from the native chiefs; they would naturally obey only their own superiors, and Governor Carter, in order to ensure their assisting the native authorities, gave explicit orders to them upon the matter. But it does not follow that because he gave these orders he was acting on his own account, independently of the native authorities. On the contrary, I am satisfied that these orders were given to ensure British officers co-operating with the native authorities in carrying out the closing of the roads, which both he and the chiefs hoped would bring about a solution of the Ilorin difficulty.

An Alleged Blockade.—I must now deal with another contention of the plaintiffs, namely, that the closing of the roads was really a blockade, and that the defendants are not protected unless they can show that they have complied with all the formalities required by International Law in the case of a blockade.

The defendant Captain Denton, in a letter which he wrote to the plaintiffs in answer to a petition they had addressed to Sir Henry McCallum, Governor Carter's successor, in reference to this matter, used the word "blockade." The letter runs as follows:—

"In reply to your petition of May 26th, 1897, I am directed by his Excellency the Governor to inform you that he has carefully considered your case; that by your own admissions you and your friends deliberately ran the blockade

between Ilorin and Ibadan long after every one was aware that the blockade was established; that you tried to get past Oyo, but were caught and only met with the fate of any other captured blockade-runner, and that under these circumstances his Excellency is unable to interfere or in any way reverse Captain Denton's decision."

The contention of the learned counsel for the plaintiffs apparently was that, the defendant having called the closing of the roads a "blockade," it must be taken to be a blockade, and that all the consequences which International Law attaches to a blockade must be attached in this case. I do not concur in this view. First, the defendant was writing, not on his own account, but on behalf and in the name of the Governor, in the course of ordinary official routine, which ordains that the Governor in official matters communicates only through the Colonial Secretary, so that if any one was bound by the use of the word "blockade" it was Governor McCallum, and not Captain Denton. Secondly, it is evident that the word was not used in the strict sense in which it is used in International Law, but as closing the roads bears some resemblance to a blockade, the latter term was used in a convenient, though loose, way for something which it resembled.

In the next place, the closing of the roads is not a blockade, though in some respects, as I have said, it resembles it. When Sir Gilbert Carter and the Yoruba chiefs decided to close the Ilorin roads, they intended to act, and did act, in conformity with the native law and custom, and had no thought whatever of modern International Law. To apply the complicated rules of European International Law to a war between two uncivilised States is both absurd and impossible, and I decline to attempt the task. The defendants must justify their conduct by the law under which they were acting, and not by law which no one at the time imagined they were acting under. They were acting under the native law of Yoruba Land, and not under the complicated system which governs the relations of modern civilised States. I am satisfied that they have amply justified their acts under the law in force where the acts were done.

Alleged Ratification by Governor.—Taking the view which I do of this case, it is not necessary to decide the other issues raised, but I think it right to make a few remarks upon that part of the plaintiffs' case in which they sought to prove that the defendant Captain Denton ratified the acts of Mr. Green. As to the alleged admission of liability by the offer of pecuniary compensation, I dispose of it at once by saying that I do not believe the plaintiffs' evidence, and I am satisfied that Captain Denton never offered the plaintiffs money. Whatever Captain Denton did amounts to no more than a refusal to interfere with what Governor Carter had done; and to hold that a person makes himself liable for the acts of another by a mere refusal to interfere, even where he has the power to do so, would be monstrous. No doubt a Governor can revoke the acts of his predecessor if he sees fit to do so, but few Governors would undertake such a responsibility, especially a Governor in the position in which Captain Denton then was, of an Administrator acting in a temporary vacancy. If a Governor were to become liable for every act of his predecessor by a mere refusal to interfere, the effect would be that no Governor would be safe; he would be responsible, not only for his own acts, but for those of all his predecessors. It was further said that Captain Denton expressed approval of Mr. Green's acts, and that as Mr. Green was a subordinate of Captain Denton, that expression of approval makes him liable. But I fail to see how a mere expression of approval can make a man liable for the acts of another, even though that other be his servant or agent. He is liable for the acts of his agent done by his authority, but to hold him liable for the

act of his servant done without any reference to him, and without his authority, merely because he expresses approval of it, is to stretch the doctrine of ratification further than it has ever yet gone. To make him liable he must do more than express a bare approval. Apart, therefore, from the broader question as to the legality or illegality of the seizure, the action fails as against Captain Denton, as he had nothing to do with the seizure, and he has done nothing since to make himself liable.

Having intimated that he placed no reliance on the plaintiffs' evidence as to the value of the goods, the learned judge added: "There will be judgment for the defendants, with costs."

FOREIGN CRIMINAL CODES.

[*Contributed by* His Honour J. S. Mosely, *Judge of Native Court, Cairo.*]

[Mr. J. S. Mosely has sent us a long and interesting article dealing with many aspects of codification. We are able to print only the following passages relating to the question whether foreign Criminal Codes contain general provisions meriting imitation. His answer is that foreign Criminal Codes recognise several rules worthy of adoption, and he illustrates his point thus:]—

Some Lessons of other Penal Systems.—I will cite three of them only —though they could be easily multiplied. According to English law—

1. The maxim, *Nullum tempus occurrit regi*, applies in all its rigour to cases of crime, so that a person who has committed a crime may be punished for it at no matter how remote a period from the date of its commission. A limitation, it is true, is placed on the initiation of criminal proceedings in certain isolated cases, such as treason, rioting, libel, illegal drilling, and a few others, but these arbitrary exceptions only emphasise the severity and unreasonableness of the rule.

2. A person charged with crime, having been previously convicted of crime, is liable to a heavy increase of punishment on the second or any subsequent occasion, be that period however distant from the date of his previous conviction.[1]

3. When an offender is convicted of more offences than one, he may be sentenced to a separate punishment for each offence, and the Court

[1] "By the existing law (the provisions of which are intricate), every one who is convicted of felony after a previous conviction for felony is liable to penal servitude for life, or imprisonment for four years with hard labour, and to be whipped once, twice or thrice (7 and 8 Geo. IV., c. 28, s. 11, and 9 Geo. IV., c. 54, s. 21, Ireland). The provisions of the Larceny Act (24 and 25 Vict., c. 96, ss. 7-9), seem to limit the maximum punishment to ten years' penal servitude, if each offence is simple larceny, but they also provide a maximum punishment of seven years' penal servitude for a conviction of larceny after a previous conviction on an indictment for certain misdemeanours, or after summary conviction for offences resembling larceny."—*Criminal Code Bill Commission Report*, 1879, p. 17.

may, if it thinks fit, direct that the one punishment shall not begin till the other has been undergone.[1]

In each of these cases the Codes of the Continent breathe a milder spirit of justice.

1. **Prescription for Crime.**—Foreign legislation is, I believe, almost unanimous[2] in placing a fixed limit of time, proportioned in length to the degree of gravity of the offence, upon the power of the State to prosecute and punish for crime; in other words, a sliding scale of prescription is universally admitted.[3] The argument in favour of the non-prescription of crime has undoubtedly much in logic to support it. What, it has been asked, is the connection between efflux of time and the commission of an offence? Where is the equality in punishing a malefactor whose evil deeds are promptly detected, who is arrested shortly after their perpetration, and in treating with impunity after a certain lapse of time one whose superior and more dangerous cunning has enabled him to make good his escape, and thus elude the grasp of justice? What virtue is there in the expiration of a certain number of days that it can efface the criminality of an action? Does time eliminate that which exists? The prolongation of life and liberty serves to enable the criminal to reap the results of his crime; if he dissipates in luxury the substance of his fellow, if he satiates a passion which has rendered him culpable, are these sufficient grounds that he should escape punishment? Is not such reasoning opposed to the elevated conception of *expiation*, which regards punishment as salutary even to him on whom it falls? These considerations carry with them great weight, yet, notwithstanding their cogency, there is no European nation save the English amongst whom the principle of criminal prescription is not of general application. How can this almost universally accepted conception of clemency be justified? Writers have put forward many more or less plausible arguments, but the only sound one is derived from the admitted right of society to inflict punishment. The exercise of this right is dominated by two principles, which in the matter of prescription are found combined: the principle of *absolute justice* and the principle of *social utility*. If the former appears to condemn prescription, the latter, on the contrary, justifies it. In fact, the punishment which follows crime at too great an interval becomes useless, since the remembrance of the evil action is effaced, the need of example has disappeared, and therefore the right to punish ceases to exist. It is, then, the presumed oblivion of the crime which liberates the criminal from the consequences of its repression. This is the theoretical justification for both branches of prescription, viz., the right to punish and the right

[1] Stephen's *Dig. Crim. Law*, 1st. ed., art. 23; *Criminal Code Bill Commission Report*. 1879, p. 17.

[2] Montenegro, it would seem, forms an exception.

[3] Bentham's view is that the adoption of prescription should depend upon the particular offence committed (Bowring's ed., vol. i., p. 521–3).

to prosecute. As regards the latter, the difficulty of adducing proof of guilt and the fallibility of human memory, especially after a long period has elapsed and the possible destruction of proofs of innocence, are valid practical reasons for the universal limitation of prosecutions.[1]

2. **Previous Convictions.**—Regarding the prescription of the *récidive*, there is much diversity amongst various legislations, but the most recent, and those which have taken full advantage of the advance of penal science, adopt the principle. It is, indeed, nothing more than a logical and necessary deduction from the foregoing rule. In some Codes a further restriction is imposed, namely, that the second or subsequent offence shall be of a nature resembling that which preceded it.

3. **Conviction for Several Offences.**—The rule, "so many offences, so many sentences," is one that rigorous logic may well accept, but which reason opposes as productive in practice of results essentially inimical on the one hand to the aim of all punishment, viz., *repression and amendment*, and on the other hand to an equitable institution of punishment in consonance with the gravity of the offence. Granted that a man guilty of several criminal actions, whether of a like or of different character, engendered by the same tendency of mind or inspired by different motives, deserves, without question, a severe punishment, seeing that such reiteration of evil deeds, such persistence in crime, demonstrates his evil instincts and perverted nature, it should be remembered that the mission of penal legislation is not simply that of punishment; the penalties which it inflicts are also designed to retrieve the culprit from his evil courses, by awakening in him the hope of regaining his forfeited position in society. Cumulative sentences, by the length of their duration, are calculated to enfeeble, if not wholly to destroy, this hope, and thereby to deprive punishment of one of its principal offices—the *reform* of the criminal. Looked at from another point of view, cumulative sentences in the matter of minor offences may produce a collective punishment of such protracted length as to exceed the probable duration of human existence, the convict thus finding himself doomed to a lifelong punishment, although he has committed no crime to which such punishment attaches. Such are undoubtedly the reasons which induced the Legislature of France to reject the principle of cumulative sentences. There is ground for believing that the English Legislature felt some misgivings as to the enforcement of this principle, seeing that by investing the Court with power to pronounce sentences to take effect concurrently, the severity of distinct and successive execution may as far as possible be minimised. The application of simultaneous execution, it may be remarked, however, defeats its own purposes. The principle of cumulative sentences carries with it by implication the corollary of separate

[1] The trial and execution of Governor Wall, at the beginning of this century, for a crime committed twenty years before, is a striking instance of the absence of prescription in English Criminal Law.

and successive execution. If punishments when accumulated are allowed to be executed simultaneously, the principle itself is entirely nullified, because there is then, in fact, no accumulation. It is abundantly clear that concurrent execution can only take effect as regards punishments of the same character and undergone in the same institution. In such case, evidently the execution of a single punishment supersedes the execution of all the others, thus rendering the rest of them absolutely illusory. The rule prevailing in France is that where, at the trial of the accused, several offences are proved against him, the crime which entails the heaviest penalty shall be the sole offence for which he is liable to punishment. Thus, in undergoing *la peine la plus forte* the convict is deemed to expiate all the crimes punishable with a penalty of the same nature or of less severity than that inflicted upon him. This is the system of *absorption* of all punishment less severe in that which is the heaviest. The system has, however, been discarded by most foreign legislations of more recent date as erring on the side of leniency. In truth, as has been pertinently observed, the culprit has no incentive to restrict the accumulation of his evil actions when once he is aware that the penalty will never exceed the maximum of *la peine la plus forte*."[1] But whilst other countries have abandoned the system of the French Code, they have equally rejected the system of additional or cumulative punishment (still in force in England), which, by inflicting as many punishments as there are offences, errs on the side of severity—a system, too, which is impracticable in case of successive sentences of death or penal servitude for life, and inoperative when such sentences are required to be undergone simultaneously. A middle course has been steered by the most recent legislations, known as the system of "*cumul juridique*" or "aggravation." In the more serious class of crime it rejects the accumulation of punishment *in toto*, though it admits it where the offence is of a character less grave; and it moderates the application of the two competing principles in such a manner that they shall not be excessive in their results. In those instances where a single punishment can be inflicted, it increases the *maximum*, and thus allows the judge to take into account the multiplicity of offences, provided always that the punishment entailed falls short of death or penal servitude for life. In cases where accumulation of punishment is admitted, the extent of its application varies in different countries; but almost always cumulative punishment is limited in such a way as to reduce the quota of punishment far below the total to which their unrestricted addition would attain.

I am, for the moment, obliged to confine myself to adducing three instances only wherein English law may profit by foreign example. It must not, however, be taken for granted that my stock of material is thereby exhausted.

[1] Bentham, *Principles of Penal Law* (Bowring's ed., vol. i., p. 400).

THE IMMUNITY OF PRIVATE PROPERTY FROM CAPTURE AT SEA.

SEVERAL valuable papers on "The Immunity of Private Property at Sea from Capture during War" were read at the recent Conference of the International Law Association at Rouen. We are unable to do more than give a few extracts from some of these papers. It will be seen that the diversity of opinions expressed was very great. Agreement as to the main controversy is apparently for the present impracticable.

The Argument against Immunity (Phillimore J.).—Mr. Justice Phillimore, in a paper entitled "Is it Desirable to Free Private Property at Sea from Capture in Time of War?" remarked:—

"It has been sometimes supposed that the Declaration of Paris in 1856 represented a tendency of modern statesmen in the direction of limiting the operations of war, and of exempting the private property of the subjects of belligerent States at war from confiscation. I think this is a mistake. . . .

"England no doubt gave up the right to seize certain property of the enemy; but she did not do it for the sake of the enemy, but on account of the neutral.

"The practice of bringing neutral ships by force away from their voyage into English ports for investigation, perhaps unlading the cargo, and then if it were found hostile sending the ship away empty, sometimes with only a *pro rata* freight, was so injurious to neutrals and so exasperating that, though logically defensible, it might well be given up on the ground of policy. I am aware that great English publicists, philosophers, and statesmen have taken a different view as to the expediency of giving up this practice; but the authority of Dr. Lushington, Judge of the High Court of Admiralty, as to the hardships endured by neutral shipowners during the war from 1796 to 1814 was rightly quoted and relied upon in the English debates upon the Declaration of Paris; and there were certainly considerations of high policy in favour of the change.

"Be that as it may, it was upon the ground of policy and with a view of conciliating the neutral that the changes were made both by France and England. The removal of the hostile taint from neutral goods found in the enemy's ship, and the affording of comparative immunity to the neutral

ship, even if it carried enemy's goods, were not concessions to a supposed idea of humanity or intentional reductions of the evils of war.

"No doubt the temporary practice of the Allies was at the time accepted by the United States as a step towards the total immunity of private property, a doctrine for which the United States then and previously contended, though their practice later was, as I shall show, different; and no doubt English shipowners and others have tried to use the Declaration of Paris as a stepping-stone towards total immunity. But each time that the attempt has been made the answer of statesmen has been the same."

Having referred to the speeches of Sir George Cornewall Lewis (*Hansard*, 3rd series, clxv., pp. 1359–1391, 1599–1706; clxxxi., pp. 1407–1480; cxlvi., pp. 1490–1491), remarks by Lord Salisbury and Mr. J. S. Mill's speech in 1867, *Phillimore's International Law*, 3rd ed., iii., pp. 362, 365, the learned judge proceeded:—

"The State which was the first to advocate as a State the immunity of capture of private property at sea was the United States. In the struggle of the War of Secession, the inhabitants of the Northern States suffered much by the capture and loss of their property at sea. What did their generals and their Government do on land? Reference has been made to General Sherman's march through Georgia. I go to another incident. Congress passed an Act forfeiting the private property of rebels—that is, of the Secessionists. The Constitution of the United States apparently forbids the imposition of the penalty of confiscation as a punishment for rebellion; and in consequence the validity of the Act of Congress came under discussion in the Supreme Court of the United States. The Act was held to be valid and not unconstitutional; but why? Because it was not an Act for the punishment of citizens, but a lawful application of the laws of war."

Having quoted Mr. Justice Story's judgment in *Miller* v. *United States*, (11 Wall. pp. 305, 311), the learned judge continued as follows:—

Prevention of War.—"In truth, with regard to war there are two principal matters to which all friends of humanity and we in our Association must give our attention; and it may be that what we should desire in respect of one will to some extent interfere with what we should desire in respect of the other. One object is to make war more humane, to diminish the sufferings of the combatant and the losses of the private citizen. No doubt many a citizen is brought to ruin by the confiscation of his property whether on sea or land. For this reason we should like to procure the immunity of private property. But a greater object is to prevent war, and, as a corollary, to bring to a speedy close any war that does break out. Experience shows that the fear of loss and the fact of loss are both powerful to prevent war and to bring about a speedy return to peace. More lives will be saved, fewer citizens will be maimed, if private property is seized and destroyed.

"One other consideration. It is a great thing to equalise nations; or, to put it in another way, to have a condition of things in which even the most powerful nation must suffer by going to war. The more vulnerable nations are, the less likely they are to attack. If it be said, and some Englishmen will say it, that England's especial vulnerability lies in the liability to capture of her property afloat, I answer that it is a very good thing that my countrymen have this deterrent to prevent them from plunging, with a light heart, into war. Except Sweden and Norway, every nation on the Continent of Europe has known, in turn, within the last one hundred years, what it is to have an invading army upon its soil.

Before last year, 1899, and the invasion of Natal, it was more than a century—in one mode of calculation more than a century and a half—since any appreciable portion of territory owning the British flag had been occupied by an invading army. And even now the distances are so great that but little of the misery brought upon the British colonists in Natal has reached to the centre of affairs or affected the minds of the governing classes. If our property afloat was free from capture, with our islands preserved from invasion, there would be little to bring home to us the horrors of war. We have no conscription. The loss would fall only on the professional soldier and his relatives, or on those who least deserve it, the gallant men who volunteer for their country."

A Mutual Insurance Scheme.—Mr. Stanley Metcalfe described a scheme of mutual insurance to cover losses caused by capture in war. The nature of the scheme—adopted by the North of England Protecting and Indemnity Association—appears from the following rule:—

"6. When, in the opinion of the directors, war between Great Britain and another maritime power is imminent, or when war shall break out between Great Britain and another maritime power, the directors shall at once, if possible, consult the Ministers of the Crown, and shall also immediately summon a general meeting of the members for the purpose of submitting to them such additional rules, or such alterations or repeal of the existing rules, as may be necessary, or desirable, in the interests of the members, or of the Empire. The members at such general meeting may adopt the additional rules, or alterations, or repeal, with such amendments or additional rules as they may think fit, whether defining, enlarging, or restricting in any way whatsoever the protection and indemnity thereafter to be afforded to members of this class, or making any differences between the steamships entered by forming additional sections, or by varying the rates of contribution payable by members, according to any circumstance affecting, or which may be considered to affect, the war risks to which they are, or may be, exposed. Unless, and until, such general meeting is summoned, and unless, and until, the members at such general meeting alter, or add to, or repeal, the rules, and until the date or dates fixed by the members at such general meeting for the altered or additional rules or repeal

to come into force or take effect, and except as provided by such altered or additional rules or repeal, the protection and indemity afforded by this class shall be, and continue to be, as provided by the rules existing at the time."

Commerce as a Feeder of War (M. Fromageot).—M. Henri Fromageot was against the exemption of property at sea from capture, chiefly for the following reason:—

"On oppose généralement le principe d'après lequel la guerre est une lutte entre Etats et non une lutte contre les individus, principe d'où l'on déduit que sur terre le belligérant doit, autant que possible, respecter la propriété privée. A cet égard il y a lieu de faire observer: 1° que, même sur terre, on est bien forcé de se soumettre à la destruction de la propriété privée, lorsque cette destruction est la conséquence inévitable d'un acte d'hostilité nécessaire; 2° que la situation n'est pas la même sur terre que sur mer. Dans le premier cas, le particulier ne peut pas, le plus souvent, protéger sa propriété contre les vicissitudes de la guerre. Dans le second cas, c'est volontairement qu'il l'expose aux risques des hostilités; 3° qu'enfin la destruction ou la capture de la propriété privée n'est pas le but mais seulement la conséquence des hostilités sur mer. Le but est l'arrêt des communications maritimes, quelles qu'elles soient, de l'ennemi. 'Is it not clear,' disait encore récemment l'éminent Capt. A. T. Mahan dans son langage si tranchant et si vivant (*Interest of America in Sea Power*, p. 133), 'that maritime commerce occupies, to the power of a maritime State, the precise nourishing function that the communications of an Army supply to the Army? Blows at commerce are blows at the communication of the State; they intercept its nourishment, they starve its life, they cut the roots of its power, the sinews of its war. While war remains a factor, a sad but inevitable factor of our history, it is a fond hope that commerce can be exempt from its operations, because in very truth blows against commerce are the most deadly that can be struck.'

"Toutefois le droit du belligérant doit recevoir deux limites: 1° les hostilités dirigées contre les communications et le trafic de l'ennemi doivent être conduites militairement; c'est ce que consacre l'abolition de la course privée; 2° le droit des belligérants ne doit pas porter atteinte à la liberté de communication des neutres, tant que ceux-ci ne font pas de cette liberté un usage hostile; c'est ce que sanctionnent les règles concernant la contrebande.

"En résumé, et sous réserve des observations ci-dessus, je ne crois pas possible la proclamation de l'immunité de la propriété privée ennemie sur mer en temps de guerre."

War a Matter between States (M. Autran).—M. Autran, of Marseilles, took an opposite view:—

"Il est un principe de droit public international que la guerre a lieu entre Etats. Il convient donc de limiter les horreurs de luttes armées à ce que j'appellerai le minimum nécessaire.

"On se demandera avec étonnement plus tard si la civilisation ne subit pas de recul, par suite de quelle contradiction on a permis à des peuples en état de guerre maritime de s'emparer des biens des particuliers du pays ennemi alors que dans les guerres terrestres le droit qui découle des conventions internationales prohibe de tels actes. Rappelons-nous la grande discussion qui s'éleva en 1871 après la guerre Franco-Allemande à propos des biens de la Banque de France—celle-ci devant être considérée comme une institution publique, une Banque d'état, propriété du gouvernement français, ou comme une banque privée. Du moment que l'on se trouvait en présence d'un bien appartenant à des particuliers ce bien devait être respecté. La question posée par l'International Law Association est identique. Si les principes universellement admis en matière de guerre terrestre sont vrais, sont conformes à l'équité et au droit positif, pourquoi ne reconnaissent-ils pas leur applications sur mer?

"Nous assistons malheureusement depuis quelques années à un recul de certaines idées généreuses de justice, de tolérance, d'humanité."

Position of England (M. Marais).—M. Georges Marais, of Paris, referring to the doctrine that war is a relation between States only and not subjects, observed:—

"L'Angleterre, si puissante et si prospère dans la paix, n'a que peu de goût dans la guerre pour cet idéalisme; nous n'osons l'en blâmer, car son appréciation des choses de la guerre correspond exactement au but que l'Etat, qui se décide à entreprendre une guerre, doit poursuivre par tous les moyens possibles, ces moyens fussent-ils cruels.

"Si l'Empire Britannique ne manifeste en ces matières aucun enthousiasme pour les chimères, c'est que ses tendances naturelles le portent vers les réalités concrètes. De tous temps, les philosophes anglais ont adopté et ses hommes d'Etat appliqué la formule suivante donnée par les Grotius: 'Chaque sujet est si intimement lié à l'Etat, que la guerre le rend ennemi tout à la fois de l'Etat ennemi, et des sujets de cet Etat.'

"Cette maxime nous semble devoir être appliquée aux guerres futures, malgré les principes de civilisation humanitaire dont se targuent volontiers les pays continentaux pendant le temps de paix, sauf à les oublier dans le feu des hostilités.

"En effet, les peuples ne sont-ils pas contraints, en quelque sorte, par la force même des choses, d'user de tous les moyens en leur pouvoir pour courber l'adversaire sous leur volonté et amener finalement sa soumission, de manière à ce qu'il ne puisse plus se soustraire au dernier moment, à l'exécution des conditions du traité de paix.

"La guerre continentale prouve ce résultat par l'invasion du territoire de l'ennemi, par le trouble et l'arrêt apporté dans sa vie économique, par la mort qui fauche et détruit les hommes.

"En un mot, partout apparaît l'emploi de la violence pour atteindre, coûte que coûte, le but désiré; sans doute, par l'effet d'une sorte de convention

tacite entre les Etats, la propriété privée des citoyens est respectée en principe par les belligérants, mais ce respect—nous aurons l'occasion de le montrer plus loin—ne s'exerce qu'autant qu'il n'entrave pas les opérations des armées en campagne.

Destruction of Private Property a Weapon of War.—"Pourquoi dès lors la propriété maritime privée jouirait-elle d'une immunité particulière dans le cas où l'ennemi penserait que, si la destruction de cette propriété doit diminuer dans une mesure appréciable les forces de l'Etat adverse et troubler si profondément sa vie économique qu'il y ait de grandes chances pour amener cet Etat à se soumettre aux conditions que son adversaire se propose de lui dicter? Dès lors encore, n'est-il pas contradictoire avec l'état de guerre qu'une nation, en temps de paix, consente à se lier par un traité formel et perde sa liberté d'action pour le cas où une guerre viendrait à éclater? . . .

"La question de l'immunité de la propriété privée, en cas de guerre maritime, n'est pas susceptible d'être résolue, *à priori*, pendant le temps de paix.

"Dans chaque guerre future, les différents gouvernements agiront sous leur responsabilité, au mieux de ce qu'ils croiront être l'intérêt immédiat de leur pays.

"Puisque ce sujet, à notre avis, ne pourrait faire l'objet de traités internationaux, qu'il nous soit permis d'indiquer en quelques mots, en nous plaçant au point de vue exclusivement français, la conduite que dans l'état actuel de l'Europe, le Gouvernement devrait adopter en cas de conflit.

"Nous faisons abstraction de cette grande puissance militaire et maritime qu'est devenue l'Amérique du Nord depuis la Guerre Espagnole; les points de contact, partant de conflit, sont en effet peu nombreux avec la France. S'il est toujours aisé de concevoir et même de signaler des difficultés possibles, il semble toutefois, qu'avec un peu de bonne volonté, la diplomatie suffira à les résoudre, sans qu'il soit nécessaire de faire intervenir les escadres.

"La France, au contraire, peut redouter une guerre dans laquelle figureraient soit une ou plusieurs puissances continentales, soit une puissance maritime, telle que l'Angleterre.

"En cas de guerre contre l'Allemagne seule ou coalisée avec des puissances continentales, il nous semble, pour le moment, que l'intérêt des belligérants, serait de se montrer très larges et fort tolérants à l'égard de la propriété privée sur mer. Il est évident que le sort de la guerre se jouerait en Champagne, au pied des Alpes ou sur le Rhin, et non pas dans la mer du Nord ou sur la Méditerranée. Les opérations d'escadre auraient, certes, leur importance; il n'en serait pas de même de la capture de bâtiments de commerce, fussent-elles nombreuses.

"En effet, sauf dans des hypothèses exceptionnelles, les belligérants ne s'affameraient pas par ces prises et si, pendant la guerre, leur vie économique était profondément troublée, la cause en résiderait dans l'appel de tous les

jeunes gens sous les drapeaux et non pas dans un arrêt de la navigation, que celui-ci soit plus ou moins complet.

"Notre solution changera, si des circonstances malheureuses amenaient un conflit entre la Grande-Bretagne et la France.

"Pour l'Angleterre, en effet, la liberté du commerce des mers est une question vitale. L'histoire toute entière de ce peuple affirme et démontre cette vérité. Il est inutile d'insister, car les anglais sont les premiers à en reconnaître l'exactitude.

"Dans le numéro du *Nineteenth Century* de Février, 1896 (Wilson: 'The Protection of our Commerce in War,' pg. 219), on lisait ceci :—

"'L'air qu'ils respirent n'est pas plus nécessaire aux êtres humains, que ne l'est pour l'Angleterre le passage libre et ininterrompu de ses vaisseaux sur les mers.'

"Voilà qui est franc et vrai. . . .

Closing the High Seas Disastrous to England.—"La mer fermée, pour l'Angleterre, produit presque nécessairement l'anémie, l'arrêt des approvisionnements de la vie sociale, peut-être la famine est-elle à redouter.

"Voilà des facteurs importants en faveur des adversaires de l'Angleterre. Qu'ils ne les dédaignent pas et que, dans le temps de paix, ils s'appliquent à les bien connaître, à en mesurer exactement la portée, pour en profiter plus tard, si malheureusement les circonstances l'exigeaient.

"La mer fermée, pour la France, n'entrainerait certes pas des conséquences aussi funestes. Assurément, ruines et faillites individuelles s'accumuleraient; il ne nous semble pas toutefois que le pays doive être touché dans ses forces vives.

"La France, pour son alimentation, peut, dans les années de récoltes moyennes, vivre sur son propre marché; les voies de terre lui resteraient ouvertes et elle s'approvisionnerait en cas de nécessité chez les autres peuples de l'Europe.

"Donc, d'un côté des coups probablement décisifs portés par la France, si celle-ci avait la sagesse, au prix de lourds sacrifices, il est vrai, de développer un système de croiseurs uniquement destinés à traquer les navires de commerce et assez rapides pour être en mesure de refuser tout combat. De l'autre, des blessures sensibles infligées à la France, mais qui ne sauraient la réduire à merci.

"Il ne faut pas oublier que dans les guerres passées, entre la France et l'Angleterre au XVIII^{e} et an XIX^{e} siècle, cette dernière nation eut toujours l'alliance et la coopération effective d'une puissance continentale. Or pour lutter avec succès, dans les conditions que nous venons de déterminer, il nous paraît essentiel que la lutte soit circonscrite entre les deux pays. Autrement, la France, absorbée par un guerre continentale, ne pourrait faire qu'un effort restreint en faveur de sa marine, et la mer resterait ainsi ouverte au commerce anglais.

"Et ce sont là des vérités qu'on ne saurait trop répéter, ni trop vulgariser.

L'esprit des masses y paraît quelque peu rebelle. La paix en dépend cependant; et en cas de guerre, le succès.

Letters of Marque.—"Nous avouons même que nous serions heureux de voir le gouvernement français dénoncer, si cela est possible, la Déclaration de Paris, pour recouvrer sa liberté d'action en ce qui concerne la course. Sans doute, les corsaires commettent des excès; en fait, ils échappent presque à toute surveillance et ils peuvent susciter de sérieuses difficultés avec des états neutres. Mais l'Etat qui délivrera des lettres de marque, édictera en même temps des règles draconiennes contre le corsaire qui outrepasserait les licences concédées. La surveillance, pour difficile qu'elle fût, ne serait pas impossible, puisque le capturé peut toujours produire ses réclamations devant les tribunaux compétents de la nation à laquelle appartient le capteur. En tous cas, il convient de passer sur tous ces inconvénients en songeant au mal que des corsaires nombreux et entreprenants peuvent causer au commerce ennemi. Nous croyons d'ailleurs qu'en Angleterre, des hommes d'Etat, conscients du danger qui menace la marine marchande, par suite des difficultés que présenterait sa protection, considèrent la Déclaration de Paris comme nuisible aux intérêts anglais, et demandent sa dénonciation, ce qui permettrait à l'Angleterre d'armer des corsaires croiseurs, pour son propre compte. . . .

"La guerre, quelque légitimes ou coupables que soient ses causes, est avant tout un état de *fait* et non de *droit*; dès lors, elle se résume dans l'exercice de la force matérielle. Nous sommes donc conséquents avec cette conception en nous déclarant hostile à toute convention susceptible de diminuer ou de limiter les effets de cette force.

"Une Convention suppose l'observation réciproque de rapports de droit. Or, tous les rapports de cette nature sont rompus, sous le régime de l'état de guerre.

"Si, donc, il ne reste que le recours à la violence pour assurer le succès de la guerre, l'Etat qui en a assumé la responsabilité ne doit s'inspirer que de son intérêt pour la direction générale qu'il entend donner à ses opérations.

"L'intérêt, comme règle directrice; la violence, comme moyen d'execution, voilà malheureusement, mais certainement, la philosophie dernière de la guerre. Et cette philosophie n'est pas un produit bizarre ou contestable de l'esprit, elle résulte de la nature même des choses.

"En particulier, s'agit-il de la propriété privée sur mer?

"Que les belligérants ne s'inspirent que de l'intérêt du moment; qu'ils la détruisent ou la respectent suivant ce que leur conseillera cet intérêt.

"Chacun agira sous sa responsabilité et supportera les conséquences d'une appréciation erronée de son véritable intérêt. La question n'est donc pas susceptible de faire l'objet d'une entente internationale. Les Etats, en conservant leur liberté d'action, se préparent ainsi pendant la paix et se mettent en mesure de faire face aux éventualités les plus rigoureuses: ils évitent des réveils terribles quand ils ne se sont pas laissé bercer par des

croyances optimistes ou amolir par la sécurité trompeuse d'un traité. Faible rempart pour une nation, d'autant plus dangereux qu'il représente une apparence actuelle à laquelle ne correspondra peut-être pas la réalité de demain.

" A cette doctrine rigoureuse, que des esprits généreux traiteront de cruelle, nous apportons deux correctifs motivés l'un par l'intérêt bien entendu de l'Etat, l'autre par le plus grand respect que l'Etat doit toujours à sa parole, *quand son existence même n'est pas en jeu.*

" D'une part, pas de violences inutiles, et au nombre de celles-ci, nous paraît être le bombardement des villes ouvertes, sans autre raison que l'incendie et la destruction.

" Toutefois, il n'y a là qu'une indication, nous ne saurions blâmer un Etat qui agirait autrement s'il avait cru sincèrement et loyalement que son intérêt lui commandait d'imposer silence aux sentiments ordinaires de l'humanité."

American Resolutions.—The American members of the Committee appointed at Buffalo (Mr. C. H. Butler, Mr. Harrington Putnam, and Mr. Julian T. Davis) made a report, of which the chief passage is as follows :—

At the Hague Conference in 1899 the delegation representing the United States made an effort to secure affirmative action in regard to freedom of private maritime property from capture during war; the Conference, however, deemed it beyond the scope of its jurisdiction, but a resolution was adopted declaring that it was advisable to consider the subject in a special conference. "The American members of the Committee are well aware that rules of maritime law which have been recognised as controlling the relations, duties, and liabilities of neutrals and belligerents for centuries can only be altered by treaty stipulations adopted with practical unanimity by all the maritime powers, and that it will be impossible to obtain any satisfactory results in this respect without a conference in which they would all be represented; your Committee also considers that in modifying the existing rules on warfare and the right to capture maritime property of enemies, it will be necessary to preserve existing belligerent rights, such as the right of search, maritime blockade, and capture of contraband; they believe, however, that a congress of all the maritime powers called especially to consider this important subject would be able to formulate rules and regulations as to the status of maritime property and the right to capture the same which would relieve peaceful and non-offending commerce from the burdens which now rest upon it, and it would in nowise diminish the effective power of belligerents. The American members of this Committee therefore present to the association the following resolution, and recommend its adoption :—

" *Resolved*, That there should be a modification of the present rules of naval warfare so far as the right to capture peaceful and non-offending maritime property is concerned, and

" *Further Resolved*, That such result can best be obtained by a conference or

congress composed of duly accredited representatives from all the maritime powers of the world, who should be properly empowered to consider this subject in all its aspects.

"*Further Resolved*, That the International Law Association recommend that such conference or congress be called at the earliest possible date, and that the Secretary of the Association be instructed to communicate with the proper officers of the various maritime governments of the world, transmitting to them a properly certified copy of this resolution.

"*Further Resolved*, That the members of this Association be requested to urge upon their various Governments the necessity and propriety of such conference, and that they take all proper means of procuring the early convocation of the same."

The Present Situation (Mr. Wood-Renton).—Mr. A. Wood-Renton, as convener of the Committee, made some observations on the extreme diversity of opinion which had been manifested:—

"That serious obstacles lie in the way of any effective action of the kind must be apparent to any one who considers the other and conflicting views which the controversy has evoked. By a large and influential section of European lawyers, the right to capture private property at sea is strenuously maintained. The assumed analogy between property on land and property at sea is denied, and it is contended, in the language of Captain Mahan, that 'two contending armies might as well agree to respect each other's communications as two belligerent States to guarantee immunity to hostile commerce.' In M. Fromageot's paper will be found a forcible presentation of this position.

"Equally formidable as a difficulty in the way of such general international action as the American Committee desire is the view which is represented by M. Marais in his paper, that the question whether private property at sea should enjoy immunity from capture in time of war is one of policy which each country must answer for itself as the occasion arises."

RECENT CHANGES IN EGYPT.

[*Contributed by* SIR RAYMOND WEST, K.C.I.E.]

THE report of Lord Cromer on the administration of Egypt in 1899 abounds in instructive matter. The picture it presents of patient effort and progress is very encouraging and satisfactory to our national pride. Here are no signs of a character "that never strongly felt or clearly willed." All shows a moderate, far-seeing, consistent purpose, aiming only at things possible, and determined to achieve them. In no department of the Government is this more manifest than in the judicial administration.

Village Courts.—The summary jurisdiction given to village tribunals in 1891 was a necessary supplement to a more comprehensive scheme recommended in 1885 which still in many of its parts awaits fruition. It had the merit of resting on a practical experiment, for the village Courts of the Madras Presidency, working under conditions not widely dissimilar at first from those of Egypt, have been approved by the experience of a century. The principle on which they rest is one wholly alien to the suspicious and over-elaborate French system hitherto favoured in Egypt, which has still as a whole to be further and greatly modified in order to adapt it to Oriental needs.

The Committee of Surveillance.—The Committee of Surveillance—also proposed fifteen years ago—appears to work with vigour and complete success. It is an institution that would not be tolerated, perhaps, in England, yet most necessary during that term of pupilage through which civil judicature has to pass in Egypt before it can claim recognition as a self-sufficing, self-controlling system. The Courts in Egypt require superintendence, at least executive superintendence, just as the Courts in Bengal required supervision by the European collectors in the time of Warren Hastings. But Hastings was himself at the head of the Chief Civil Court. There could be no clashing between it and its subordinate superintendents. That system was essentially provisional. It gave way in no long time to a complete separation of the civil judicature from the Executive, to the independence of the former as an aggregate, but, with a severe control over the lower Courts exercised by the Chief Court, raised itself to the position of a power co-ordinate with the Executive. This has continued down to our own day, and the function of thorough-going scrutiny and control exercised by the High Courts directly and through the district judges has contributed more, perhaps, than anything

else to the purification and efficiency of judicial work in India. The Chief Court in Egypt is as yet pitiably weak, but by-and-by it must be stronger and more conscious of its proper place. The judicial system must become more complete and self-contained. The functions of the Committee of Surveillance should, then, be handed over to the Chief Court or else exercised in subordination to it. The object of executive arrangements affecting civil Courts is to make them adjudicate speedily and well, and the judges of higher rank know best how this is to be effected.

The Penal Code.—It appears that a revision of the Egyptian Penal Code is in progress. This Code, crudely adapted from the French, is, it may be said, specially ill-adapted to the needs of an Oriental community. Soon or late it must disappear under the friction of practical experience. "At present the revisers' aim," we are told, "is one of incorporating the results of modern tendencies." What precisely that may mean it does not seem easy to say, but if the intention is to avoid "any radical changes," then it is certain that there will still be some work left for future reformers. A substantial improvement, however, is even now under consideration—a modification of the system of police supervision after the expiry of a criminal's sentence.

Police Supervision.—This is a matter that calls for the most careful treatment. The nightly roll-call of bad characters in Indian villages has been the means of preventing thousands of dacoities; and brigandage on the Egyptian scale of a few years ago called for a preventative measure of a similar kind. Police supervision, on the other hand, too often amongst Orientals means police tyranny and blackmail. Few persons, except those who have had actual experience, realise the extremely debilitating effect of long confinement in gaol. It seems to produce an almost total atrophy of the organs of forethought, initiative, and persistence. Hence those who have served a long term, unless taken care of by friends, almost inevitably gravitate back again to confinement. Many become really happier in gaol than out of it—at least, when the work is light and the dietary liberal. Such men or women let loose find it very hard indeed to earn their living; they are in a measure morally disqualified for the task, which is not quite a light one for the ordinary labourer. The taint of crime excludes them from many an employment. Police surveillance may to such prove like the fascinating gaze of the serpent, leaving no practical alternative to falling helpless into the open jaws of ruin. It is a rather strange coincidence that, while surveillance is found mischievous in Egypt, it should just have been introduced or restored in India by the new Code of Criminal Procedure. It was once proposed to limit surveillance to a term equal to that of the imprisonment awarded in the same case. It should be imposed only in cases of reconviction, and even in such cases should be alternative to finding sureties for good behaviour.

Aiding Discharged Prisoners.—It is impossible to call on employers

in Mohammedan any more than in Christian lands to take released prisoners rather than innocent persons into their service, but no more Christian work can be done than by a society for aiding the poor outcasts who have fallen, it may be almost by accident, and who if allowed would return almost at any cost to honest ways. Amongst the Moslems the obligation to this work of mercy is still more pronounced. The Prophet declared that the penalty imposed and suffered according to the law was an expiation which effaced the stain of crime. A good Mohammedan is forbidden to twit another with an offence thus atoned for. It may be hoped that one day in Egypt, amongst the worshippers of the "One God, merciful and compassionate," societies may be formed which will put an end to the necessity for police supervision, will take charge of the released offender, make a way for him—not too smooth, yet not impossible—to return to honest ways, self-help, and self-respect.

Juvenile Offenders.—Similar considerations apply in a great measure to another question touched on by Lord Cromer—that of juvenile offenders and reformatories. He suggests a wider application of the birch. Here the example might be followed of the English First Offenders Act, which has worked with excellent effect. It has been imitated in India, and there is no obvious reason why it should not suit Egypt equally well. The first true consciousness in a parent of his responsibility for his child's moral guardianship is sometimes aroused by having to become answerable for producing him for punishment in case of a second delinquency. It is a wholesome tonic, which may be administered liberally in a disordered state of society without any fear of serious injury.

Limited Liability Companies.—It is an indication amongst many others of the rapid material progress that Egypt is making under British superintendence that elaborate rules have become necessary for the regulation of incipient limited liability companies. It is not possible to gather from the summary given by Lord Cromer what exactly the working of the new regulations will be. This much appears, however, that the formation of a new company is to be subject to the approval of the Executive, and it is thought necessary to intimate that such an approval is to count as no more than a permission. But a permission by a Government which keeps a power of refusal in its hands can always be used, and will be used, as at least a half-recommendation. There will be some possibility and frequently a strong suspicion, of improper influences being brought to bear, in order to obtain countenance or preference on the part of the Government to doubtful or competing projects. The plan of paternal or maternal watching over the industrial activity of young Egypt will no doubt by-and-by be found incompatible with the development of which association with limited liability is a natural product. Either enterprise must be unduly curbed or else the Executive must be content to lay aside its assumption of overruling wisdom in allowing or prohibiting particular extensions of commercial activity and inventiveness. The rules themselves, which must be conformed to in order to make a case

for Government toleration, are, it would seem, founded in part on the English law. Their framer, resolved to be comprehensive and fearing a dearth of wholly appropriate local material, reminds us of that earlier constructive genius of whom Horace tell us :—

> Fertur Prometheus addere principi
> Limo, coactus, particulam undique
> Desectam.

Thus we are presented with fragments from the German and the French law to eke out the deficiencies of the insular British legislation. The Swiss and the Italian Codes do not appear to have been drawn upon, though each of these would have contributed some rules *primâ facie* commendable. What is wanted is a group of regulations for preventing gross deception, practical, harmonious, and not so restrictive as to smother the infant. The requirement that before a company is finally incorporated the whole of the capital must be subscribed, and one-fourth actually paid up, is too exacting for many an enterprise which from very small beginnings hopes to grow into a great conduit for the introduction of foreign capital. An irrigation company needs its capital only by small instalments. The competition in other cases would be too severe for the local company as against the foreign company working under easier conditions, and virtually free from official interference. The publication of the whole of the memorandum and articles of association in certain newspapers will be a good thing for the proprietors of the journals, but will not be specially useful in other respects. It will certainly be burdensome to small companies. The power of issuing debentures is limited to the amount of the paid-up and existing capital. This will unduly hamper a native Crédit Foncier competing with foreign institutions, which, with a reserve of potential uncalled capital, manipulate large amounts of borrowed money on the basis of a small proportion of their own capital actually called up. There appears to be over-regulation in the provision that for two years all important purchases are to require the confirmation of a general meeting. The best bargains are obtained from owners pressed by some urgent need, and how could these wait in uncertainty for the completion of this elaborate process? Vendors' shares are not to be issued in specie for two years. This is a French provision which does not prevent the vendor meanwhile from raising money on his rights, and from selling them, always at a disadvantage (reflected on the company), through the delay in realisation and the risk attending it.

Altogether the eclectic philosophy embodied in this branch of Egyptian legislation—if legislation is the right term for it—may well be hailed by the foreign companies as likely to shield them against native competition. For the native shareholder many safeguards are provided, good and bad, which it is to be hoped will be applied always by persons uninterested in the foreign companies. For the native small capitalist of enterprise and

inventiveness there will be difficulties and discouragements tempered only by his submissiveness to Kismat and his sense that all human laws, all rules outside the sacred Shariyat, are but caprices or provisional devices made to be circumvented or by-and-by annulled.

The Mahkamah Sharia.—There is an inevitable picturesqueness in the portrayal of a civilisation still in the earlier stages of growth. The shifting of the scene is like opening a page of *The Arabian Nights* in a London chamber when Lord Cromer takes us in a moment from the modernest of modern rules concerning limited liability to the working of the Mahkamah Sharia, the chancery which has to deal according to the text of the Koran and the traditions with those questions of marriage, sonship, and succession which are questions of religion as well as of law—of law resting essentially on and involved in religion, and consequently sacred and immutable,—in the face of social conditions far as the poles asunder from those of Arabia in the seventh century. The line taken by the Egyptian Government in its efforts at reform reminds one not a little of the difficulties encountered by Akbar and his mode of surmounting them, though there is no ground for suspecting that the Khedive aims at making himself the centre of a new conglomerate religion. The Legislative Council, while recognising the need for reform, could not resist the vehement denunciation of its "mufti," who pronounced the infusion of new blood into the Mahkamah a revolting sacrilege. The mufti was removed; but the reform has, for the present, been abandoned. A Commission has been appointed to consider the question. The Kazi-ul-Kázát and the new mufti, who are members of the Commission, might usefully be invited to read that part of Akbar's history which tells how similar dignitaries who proved too obstinate were sent by the masterful emperor on a pilgrimage to Mecca and fared but poorly afterwards. Pliant lawyers are certainly to be found in Egypt; and the authority over people's consciences of one great "kazi" is as strong as that of another. The kazis are chosen by the ruler from amongst the class of Mohammedan D.D.'s, who in the same sense are LL.D.'s. But the "Ulama" or class of theological lawyers are not as such a sacrosanct corporation. There is no foundation in the sacred writings for their extreme and exclusive pretensions. In India, under Akbar, they were virtually unorganised and helpless. In Turkey they were, for political reasons, incorporated by the Sultans Mohammed VI. and Soleimán, but this constitution rests really on the ruler's will, and the Shekh-ul-Islam himself has been taught to bend like a reed before a determined sovereign. Under Akbar the decisions of the highest kazi were subject to review by the Amir-i-ádl, over whom, again, the Emperor placed himself. The Musulman civil Courts in Bengal, under the grant of the "diváni" to the East India Company, were partly reformed and presided over by others than members of the Ulama class. The operation of their own law was guaranteed to Moslems; and muftis were retained to expound it. As coadjutors of

European judges they found themselves able to expound it in ways consistent with social progress.

"Fatwas" and Social Progress.—Reasonable effect was given to their "fatwas," and the result has been that in India (as also in Algeria), there being absolutely no desire to meddle with religious institutions, the Mohammedan law has received a more beneficial development than in any purely Mohammedan country. There is a certain pliability even about the sacred law. Interpretation has to be employed, and concurrent *responsa prudentum* are recognised as sources of principles. Where under European rule society is rearranging itself on a new basis, the fatwas or *sententiæ* of the muftis are insensibly moulded by the prevailing jural influences: nebulous passages in the Shariyat are crystallised into clear-cut rules of law adapted by the exigencies of the day. Under Musulman rule this progress is almost impossible: the modern successors of the "mujtahids" find their account in keeping to the narrowest beaten track of patristic interpretation. It costs least in mental labour, and is most readily accepted by a suspicious and dogma-ridden population.

Reform and the Koran.—The path of law reform by legislation is in no country strewn with roses; but nowhere, probably, are the thorns so abundant and obtrusive, nowhere is progress barred by such an impenetrable hedge, as amongst a pious and ignorant Musulman community. The character of prophetic inspiration ascribed to the multiform teachings of the Koran, the sanctity attached to the precepts drawn directly from this source or from the equally sacred fountain of Mohammed's example, gave in the beginning a basis and an impulse to Islamic ideas which caused an advance, feasible in no other way, among the half-civilised or wholly savage converts to the faith. To the Berber and the Tartar the acceptance of Islám was in itself a civilisation, a sudden awakening to a new world of religious and moral conceptions, simple and comprehensible as preached to him, and infinitely superior to all with which he had heretofore been familiar. In the exaltation of spirit produced in him by this revelation of a new and nobler creed, he was able to cast away traditions, superstitions, inhuman practices, to submit to kindlier laws and find a happiness in such obedience. His whole scheme of life was raised to a higher level, and the pervading spirit of Islám having taken possession of him, he became in his own person or in his son identified in beliefs and aims and conceptions with the Mohammedan mass, in which he had merged his original personality. So is it still with the multitude of Negro converts drawn to a faith in one God, merciful and compassionate, by the Moslem apostles of to-day. In becoming Mohammedans they have at least become susceptible of moral improvement. They are moved on towards their still somewhat poor ideal by hopes of heaven and fears of hell, realised with a vividness unknown to the "light half-believers of our casual creeds." They develop that enthusiasm for a holy cause—"fanaticism" we miscreants call it—which made thousands of the Mahdi's

followers rush eagerly on death. All this because they hear the voice of their new-found God sounding in their ears. It is a voice which calls them to a wider and better and more reasonable social life on earth, as well as to the sacrifices that win joy for eternity.

The Progressives of Mohammedanism.—But presently—in a generation or a century—they have expanded in intelligence, in material needs, in social and political cravings, to the full dimensions of the sphere which once seemed almost too large for them. The forward spirits are troubled with unrest, for the same divine voice, or voice held divine, which of old urged them forward now mutters "forbear." The stays of childhood have become the trammels of maturity. The life once made easy, expansive, satisfying, by a revealed indication of the whole round of human relations and rights and duties is now contracted, stunted, stifled, by the too specific and particular behests of a thousand years ago. In that long period "lofty minds and meditative" have from time to time sprung up in the Mohammedan as in other communities, men who fretted at the contracted and ever-narrowing sphere allowed to speculation and moral growth by the conventional interpretations of their scriptures. But the early "mutazalas" were too evidently heterodox; they were also too much given to abstract and subtle speculation to have weight with a commonalty but lately emerged from semi-barbarism. The crowd were better pleased with propositions and formulas which appealed alternately to different sides of their rude nature than with the attempts of philosophers to bring the parallel lines of divine omnipotence and of human free-will into an infinitely far-off conjunction. They even resented with savage vehemence the milder and more liberal constructions by which the apostles of progress sought to make orthodoxy compatible with free intellectual activity and social amelioration. No amelioration was possible where all had been defined; it was impious to seek happiness or elevation by new ways when all had been revealed that the divine will deemed expedient for men's good. The rulers of the Mohammedan world were, in many instances, favourably disposed towards the reformers; but, despotic as they were in theory, they had to bow to popular passion. The writings of the philosophers were many times burned; the apostles of progress too often became its martyrs.

There is no strictly ecclesiastical order amongst the Musulmans. In theory, any one possessing the requisite abilities, and especially a knowledge of Arabic and of the Koran, may stand forth to read the sacred book and expound it. No priest may stand between the penitent and his Maker.

Musulman Zealots.—But amongst the Orientals, even more than amongst Europeans, there are many men born with that specially ecclesiastical bias which, in spite of learning and experience, makes them zealous and fiery advocates of dogmas the least reconcilable with human reason. Islám produced many doctors of profound and barren learning, of extraordinary dialectical ability, who, resting on the admitted inspiration of the Koran

and the Sunnat, found in these the means for overthrowing their liberal adversaries, a closely reasoned if practically futile philosophy of their own. The sometimes wild excursions of the speculative mutazalas gave many openings to the dogmatists; and national as well as religious prejudice was called in to support a self-contained and inexpansive system resting on the letter of the texts against philosophical conceptions drawn from Greek and Persian sources. Such progress in learning as was made by the Arabians under the Ommeyads was greatly influenced by their contact with the more cultivated peoples of Syria and Irák. Under the earlier Abassides, there was a general fermentation of new ideas. All subjects, even the most sacred and mysterious, were audaciously dissected. As enlightenment increased reverence withered, and while pious minds were shocked, many whose great abilities were accompanied by an instinctive love of order and authority were driven into the current of reaction as the only alternative to religious and civil collapse and chaos. The reaction itself assumed varying phases according to the characters of those who joined in it.

Abu Hanifa.—It was a marked characteristic of Abu Hanifa, the great Imam-i-Azam, to reject ill-authenticated traditions. He based his doctrines on the texts of the Koran, and thence developed them with keen dialectic skill, according to a system which he may be said to have devised for the purpose. Malik, and still more Hánbal, confined the use of reasoning within the narrowest limits. They sought a sacred authority for every proposition in theology and law. Social needs demanded solutions, and as only traditions could furnish such solutions, criticism was hypnotised and the supply of precedents expanded so as to meet the demand. The Hanafi jurists could not resist the influence of this reflux of bigotry and narrowness. Sifátism, consisting chiefly in an undiscriminating worship of the letter, gained a complete predominance in the early part of the ninth century. The mutazalas, or rationalists, were persecuted; the rational doctrines even of the Hanafis were in a measure stifled and suppressed.

The Traditionists.—The Hanafis were called the "reasoners and analogists" by themselves and by the other sects, who prided themselves on the title of traditionists. But for centuries now the influence of these traditionists has reacted so strongly on the Hanafis, that, although within the bound of doctrine laid down by Abu Hanifa, full play is allowed to human intelligence, yet no new principle, no extravagance, no expansion is deemed orthodox. Abu Hanifa, however, was a man, not only of learning, but of extreme pliableness of intellect. He brought many cases within the scope of the traditions, deduced many principles from them, on which modern reformers may build up a jural structure not identical with the European systems as to sources and methods, but quite in harmony with them as to conclusions.

The New Anti-Dogmatic Movement.—The great majority of the Egyptians are adherents to the Hanafi school, in the contracted range of thought to which it has been content to limit itself. But as its doctrines have grown

narrow and pedantic under extrinsic influences, there is no eternal reason why they should not expand again. There is an evident movement among the younger Moslem scholars and lawyers of the present day tending to escape from the fetters of dogmatic interpretation. These men are not less truly representative of the Mohammedan community as it now exists than the fossilised sticklers for immobility. The Egyptian parquet, to go no farther, has always some members whose presence in the chief Mahkamah would give light and strength to its decisions. But by degrees the kazis and muftis should be absorbed into the ordinary Courts. Appropriate places and functions could there be found for them, and the whole administration of justice ought to gain in efficiency, dignity, and reverence by the amalgamation.

The anomalous institution of the Mixed Tribunals in Egypt is touched on by Lord Cromer lightly, and with diplomatic reserve. They are beloved by the Continental Governments as a *pied à terre* whereby interference in Egyptian affairs is made always possible. They are disliked by the Egyptians as a continuous assertion of their inferiority. One result of the judicial reforms which lovers of Egypt must strenuously push forward will be to make these exotic Courts an obvious superfluity and a wasteful incumbrance. So long as they are maintained they practically constitute an international declaration that Egypt, being incapable of dispensing justice to all denizens, is unfit to stand alone.

GERMAN LEGISLATION—GAMBLING ON THE BOURSE.

[*Contributed by* JULIUS HIRSCHFELD, ESQ.]

Purchases by Instalments.—One of the legislative efforts made in Germany for the protection of the "economically weak" (*wirthschaftlich Schwachen* —a term constantly recurring in the "Motives" to this class of Statute), is an Act relating to sales in which the purchase-money is to be paid by instalments. Its essential provisions may be summarised thus: Where a vendor has reserved to himself the right to withdraw from the contract in consequence of the purchaser's non-performance of his obligation, if the former avails himself of his right, each party will be held liable to return whatever he has received from the other side. A stipulation to the contrary is null and void. The purchaser will in that case be bound to indemnify the vendor for any damage (not, however, *lucrum cessans*) which the latter may have suffered, and will also have to pay for the use of the subject matter. If the contract provides for a fine, the purchaser may, if he considers it excessive, apply to the Court for a reduction. A stipulation by which the remainder of the purchase-money is to become due at once in case of the purchaser's remissness is only enforceable where there are at least two instalments overdue, and their amount equal to the tenth part of the purchase price. This Act does not, however, apply to a purchaser who is entered on the Mercantile Register, such a person not being deemed to come within the class of the "economically weak."

Bourse Gambling.—Another Act of the same category, called the "Bourse Law," is directed against the "Bourse Swindle"—*i.e.*, the abuse, for gambling purposes, of an institution recognised as otherwise indispensable in a modern State. The Act deals with the organisation of Bourses, their supervision by the State, their Courts of Honour, the settling of the list of quotations, the Institute of Brokers and Commission Agents, the admission of shares to Bourse transactions, and to time bargains.

As regards the latter it is provided that they are absolutely prohibited in mining and industrial shares, and are only permissible in other shares where a company's capital amounts to twenty milllon marks. "Bourse like" time bargains in corn and milling products are entirely forbidden.

Time bargains do not create an obligation unless both parties are on the

Bourse Register. The obvious idea of this proposition is to keep the general public away from transactions of this kind and confine the latter to their legitimate commercial use. In practice, however, it has led to somewhat startling results, in so far as the Courts have held that even payments made on account or pledges given as security would—contrary to the general law on gaming and betting—be recoverable by an unsuccessful speculator. Cases have occurred in which a person bought from one member of the Stock Exchange a certain amount of stock which at the same time he sold to another member. Now, whenever the prices went against him, he repudiated the contract, pleading a time bargain, and demanded his security back, whilst coolly pocketing the balance in his favour from the other transactions.

Registration of Firms.—A Bill for the registration of firms having lately been introduced in the House of Commons, it may be interesting to refer to the principal provisions of the German Commercial Code relating to that subject. The most important difference between the German Law and the English Bill is this, that according to the former every merchant without exception has to enter his firm-name on the register, whilst the English Bill proposes to limit this obligation to such traders as do not carry on business under their own names. Besides, the German law does not allow any one to embark in business under an assumed name, nor must a firm-name suggest a partnership where in fact there is none. In the case of a partnership the firm must contain the name of at least one acting partner. These restrictions, however, do not apply to cases where an already existing firm, or share in such a firm, is transferred either *inter vivos* or *mortis causa*.

Another provision is that every firm must bear a distinct name from any other in the same district, and where the names of traders are alike, the latter applicant for registration must, by way of addition or modification, give a distinguishing mark to his firm.

It is also provided that the dissolution of a business is to be registered (the English Bill contains no provision to this effect); and the power given to an employee to contract and sign on behalf of a firm (*procura*) must likewise be entered.

Patent Agents.—An Act relating to patent agents has just come into operation. Its principal proviso is that a person who wants to be entered in the official list must prove his technical and legal qualification. To do this he is required to pass an examination previously to being admitted at a university or technical academy, where he has to study for two years and pass an examination, then to go through a course of practical training in an industrial establishment, and in the office of a patent agent, for a period of three years in all, and lastly to pass a legal examination. There are detailed provisions as to Courts of Honour in cases of dishonourable conduct of patent agents.

MODES OF LEGISLATION IN THE BRITISH COLONIES: MAURITIUS.

(Being answers to a series of questions addressed by the late Lord Herschell—the then President of the Society—to the Secretary of State for the Colonies, to obtain information respecting the Common and Statute Law of the several Colonies, the methods of legislation, the publication, revision, and consolidation of Statute Law and matters connected therewith: see vol. i., New Series, p. 70).

[*Contributed by* E. KOENIG, ESQ.]

I.—COMMON LAW AS THE BASIS OF STATUTE LAW.

(*a*) *What is the Common Law of the Colony? Under what circumstances and by what authority was it introduced?*

There is no Common Law, in this sense: that there is no unwritten law in the Colony. The island, which was formerly a French possession, was governed by the French law, as modified or supplemented by local Enactments. By one of the Articles of Capitulation (1810), subsequently confirmed by proclamation, the laws in force were preserved. By the Treaty of Paris (1814), Mauritius and its dependencies were ceded to England "in full right and sovereignty," without any reservation as to the laws. They were, nevertheless, preserved, and in course of time modified on certain points by subsequent legislation, derived from French as well as from English sources.

The Common Law of England has been made applicable in trials by jury and in matters of evidence, on all points not provided for by the local law.

It must also be observed that the Supreme Court of Mauritius being a Court of Equity, and being also "invested with the powers, authorities, and jurisdiction possessed and exercised by the Court of Queen's Bench," the Common Law of England thus becomes applicable in many cases.

(*b*) *Is there any law applying exclusively to particular races or creeds?*

Ordinance No. 18 of 1878, the Labour Law of the Colony, contains some provisions applying exclusively to Indian immigrants and to liberated African slaves.

Ordinance No. 16 of 1856, which authorises the substitution of affirmations to Hindoos and Mohammedans in lieu of oaths, and the Oaths Ordinance (No. 28 of 1899), which allows declarations to be made instead

of oaths by persons of no religious beliefs, or of special beliefs, may be considered as laws applying exclusively to particular creeds.

We have, besides, a few Ordinances dealing with the Roman Catholic religion (creation of *fabriques*, tariff for funerals, etc., distribution into parishes) and with the Churches of England (temporalities of the Church, jurisdiction of the bishop, etc.) and of Scotland (Presbyterian Committee, etc.)

II.—Statute Law.

(*a*) *Of what does the Statutory or Enacted Law of the Colony consist? To what extent is it embodied in Charters, Regulations, Orders in Councils, Ordinances, or Acts?*

The Statutory Law of the Colony consists of:

The French Civil Code, the French Code of Civil Procedure, and the French Code of Commerce, such as they stood in 1810 (all three more or less modified by subsequent legislation).

A few Colonial *Arrêtés*, *Décrets*, and Proclamations issued during the French period;

Some Proclamations issued between 1810 and 1825;

Letters patent under the Great Seal of the United Kingdom of March 22nd, 1879, constituting the office of Governor and Commander-in-Chief;

Letters patent of September 16th, 1885, and September 3rd, 1894, constituting the Council of Government;

Royal instructions to the Governor of December 27th, 1888, and additional Royal instructions of March 1st, 1889;

The Statutes of the United Kingdom which are expressly, or by necessary intendment, made applicable to the Colonies;

Orders in Council issued for the Colony, as well as those that are made applicable to the Colonies generally;

Local Enactments or Ordinances.

And, lastly, Bye-laws, Rules, and Regulations made in virtue of certain laws, and which will be considered under the heading, "Subordinate Legislation."

(*b*) *To what extent do the Statutes of the United Kingdom operate in the Colony by virtue of either:*

(i) *Original extension of the English law to the Colony;*

(ii) *Express provisions of any Order in Council or Charter;*

(iii) *Express adoption by the Legislature of Colony.*

The Mauritius Hurricane Loan Act of 1894 was passed expressly for the Colony.

The Imperial Statutes which relate to the holding of lands by aliens operate in this Colony, in virtue of Order in Council of January 15th, 1842.

Those which relate to trials by jury and to evidence are applicable in

virtue of Ordinances No. 10 of 1850 and No. 15 of 1881 respectively to cases not already provided for by the local law.

The Catholic Emancipation Act was made applicable by Ordinance No. 55 of 1829.

The Imperial Statutes which relate to suits *in formâ pauperis* are made applicable by Ordinance No. 37 of 1881.

The application of the Merchant Shipping Act of 1894 is regulated by Ordinance No. 18 of 1899.

The practice has also been for a number of years to reproduce in the shape of local Acts or Ordinances, and with more or less important modifications, such of the Imperial Statutes as were considered useful for the Colony —*e.g.* the Bankruptcy Ordinance of 1887 is borrowed from the Bankruptcy Act; the Companies Winding Up Ordinance of 1882 from the Joint Stock Companies Act; and the District Courts Ordinances of 1887 from the County Courts Acts.

(*c*) *Is the Statute Law of any other Colony in force in the Colony?*

There is no Statute Law of any other Colony in force in the Colony.

(*d*) *Is any Code or any other body of Enacted Law of non-British origin in force in the Colony?*

The Codes of non-British origin in force in the Colony are the three French Codes mentioned above: the Civil Code, the Code of Civil Procedure, and the Code of Commerce. To these may be added those *Arrêtés* which were published during the French period and are still in force; they form part of the collection called "Code Decaen."

III.—Methods of Legislation.

(*a*) *By whom are drafts of legislative measures prepared? Is there any official draftsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?*

There is no official draftsman. Government measures are drafted by the Procureur-General, who is appointed by the Secretary of State for the Colonies and is responsible to the Governor in Executive Council; he has no special staff for that work; his duties do not extend to measures introduced by private or unofficial members of the Legislative Council; these are drafted by those members themselves.

(*b*) *What is the constitution of the Legislative Chamber or Chambers through which measures have to pass?* (A reference to Statute Law or Charter, or Order in Council or to any recognised text-book, will suffice.) *If there are two Chambers, may measures be introduced in either?*

The first Council of Government was established by letters patent on June 20, 1831.

The present Council of Government, which is partly elective, is constituted

by the letters patent of September 16th, 1885, and September 3rd, 1894, and by the Royal instructions of December 27th, 1888. There is only one Chamber.

(*c*) *Are draft measures published before introduction or before any other stage? If so, under what rules?*

Draft measures are printed and distributed among the members three days at least before their first reading; they are published in the Government *Gazette* after their first reading (Art. 41 of the Standing Orders made under s. 47 of the letters patent of 1885).

(*d*) *Through what stages does a measure pass before it becomes law?*

Fifteen days at least after its first reading the draft measure is read a second time, and then committed, *i.e.*, the Council resolves itself into Committee and discusses the clauses seriatim. Any member is free to move amendments. If there are no amendments and if no member objects, the measure may be read a third time on the same day, but if amendments have been adopted, or if any member requires it, the third reading is postponed to the next meeting of the Council, the draft measure as amended being printed and distributed among members three days at least before such next meeting. In cases of urgency, the Standing Orders may be suspended and the Ordinance passed through its three stages at the same meeting.

After being read a third time and passed, the Ordinance is presented to the Governor for his assent by the Colonial Secretary; it is then published in the Government *Gazette*, and in the absence of a suspending clause becomes law from the date of such publication, and it remains law, unless disallowed by her Majesty.

(*e*) *Is any opportunity afforded for referring measures, while in course of passage through the Legislature, to any special officer or Committee on points of form?*

There is no opportunity afforded for referring measures to any special officer or Committee on points of form; but at any stage of their progress they may be referred to some special Committee or to one of the Standing Committees; they may also on, or even after, the third reading be recommitted if some member requires it.

(*f*) *Have any steps been taken to secure uniformity of language, style, or arrangement of Statutes, either by means of a measure corresponding to Brougham's Act* (13 & 14 *Vict., No.* 21), *or to the Interpretation Act*, 1889, (52 & 53 *Vict., No.* 63), *or by official instructions or otherwise?*

Ordinance No. 2 of 1881 has been passed for the shortening of language used in Ordinances.

In the Royal instructions of 1888 three rules are to be found concerning the style and arrangement of Ordinances (s. 28).

Ordinance No. 8 of 1898 has been passed to amend and codify the law as to common forms; it contains provisions concerning the interpretation

of terms used in Ordinances; and these provisions are made applicable by Ordinance No. 9 of 1898 to some existing enactments.

(*g*) *Is there an annual session of the Legislature? Are there any fixed or customary periods of session?*

There is an annual session of the Legislature; the session usually extends from May to December.

(*h*) *How are the Acts or Ordinances of the Colony numbered or distinguished? Are they numbered by reference to the calendar year, or to the regnal year, or in any other way? Is it the practice to confer for convenience a "short title" on each Act or Ordinance? How long has this practice been followed?*

The Ordinances of the Colony are consecutively numbered by reference to the calendar year, commencing each year with the number one. Ordinance 8 of 1898 makes it imperative to confer a short title on Ordinances; but the practice had been generally followed, as far at least as the more important ones were concerned.

(*i*) *Are private Bills (if any) treated separately and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts or Ordinances separately numbered?*

Private Ordinances are not separately numbered; they are not treated separately from public ones; but the Governor cannot assent thereto until proof be made before him that adequate and timely notification, by public advertisement or otherwise, was made of the parties' intention to apply for such Ordinances. No private Ordinance can be passed whereby the property of any private person may be affected, in which there is not a saving of the rights of the Sovereign, of all other bodies politic and corporate, and of all other persons, except such as are mentioned in the said Ordinance, and those claiming by, from, and under them. The distinction between public and private Ordinances may be said to be based upon the same principles as in England.

(*j*) *Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?*

No practice exists of accompanying a measure on its introduction by an explanatory memorandum; its introducer explains it.

IV.—Publication of Statutes.

(*a*) *In what manner and under what authority are Statutes promulgated? What evidence is accepted of a Statute having been duly passed?*

Ordinances are promulgated by being published by the Governor's direction in the Government *Gazette*. The fact of such publication is accepted as evidence of the Ordinance having been duly passed.

(*b*) *In what form or forms and under what authority are Statutes printed for publication?*

Ordinances are printed in a collected form, at the end of each session, under the authority of the Governor.

(*c*) *Are the Statutes of each session published in a collected form at the end of each session?*

They are so published.

(*d*) *Are the periodical volumes of Statutes accompanied by*

(i) *An index and table of contents;*

(ii) *A table showing the effect on previous legislation?*

The periodical volumes of Ordinances are accompanied by a table of contents; there is no index. There is no table showing the effect on previous legislation, but the Ordinances usually contain a repealing clause which indicates such effect.

(*e*) *What collective editions (if any) of the Statute Law of the Colony have been published, and whether by the Government or by private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the Colony?*

A *Collection of the Laws of Mauritius and its Dependencies*, containing all the laws enacted from January 1st, 1772, to December 31st, 1861, was compiled by the late Mr. Justice Rouillard, and published in nine volumes in 1868 by Government.

An edition in three volumes of *The Laws of Mauritius Revised*, by F. T. Piggott, M.A., LL.M., Procureur and Advocate-General, L. A. Chibaud, of the Middle Temple, barrister-at-law, now Acting Puisné Judge, and F. A. Herchenroder, of the Middle Temple, barrister-at-law, now Acting Judge of Seychelles, was published in 1897 under the authority of Government.

The latter work contains a list of the Statutes of the United Kingdom which are in force in the Colony.

These two works were only published once.

(*f*) *Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Public Utility"?*

No.

(*g*) *How are private Acts published?*

In the same way as public ones.

V.—Revision of Statutes.

(*a*) *Have any steps been taken for the revision and expurgation of the Statute Law, whether periodically or otherwise? What machinery (if any) exists for this purpose?*

No legislative measures have as yet been taken for the general revision and expurgation of the Statute Law.

(*b*) *Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how*

otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle?

The edition of the *The Laws of Mauritius Revised* mentioned above, and published in 1897 under the authority of Government, contains the laws actually in force at the time of its publication. The work is divided into a number of groups, and each group contains all the laws dealing with the same subject. The groups themselves are arranged chronologically.

VI.—Indexing of Statute Law.

Is there any general index to the Statute Law of the Colony? If so, on what principle is it arranged, and after what interval is it revised? Does it include both public and private Acts and Ordinances and the Statutes of the United Kingdom which are in force in the Colony? Is it accompanied by any tables showing how each Statute has been dealt with? What is the date of the latest edition?

Several indexes to the laws of the Colony have been published:

1. A general index to Mr. Rouillard's *Collection of Laws* mentioned above, which is arranged alphabetically and was published along with the work.

2. An index by Mr. L. A. Hugues, of the Middle Temple, barrister-at-law, now District Magistrate; the first and last edition was published in 1879.

3. One by Mr. W. Greene, Crown Solicitor; the fifth and last edition is of the year 1879.

4. One by Mr. L. A. Chibaud, of the Middle Temple, barrister-at-law, now Acting Puisné Judge; the second and last edition is of the year 1892.

(The indexes Nos. 2, 3, and 4 are works of a similar kind; they are alphabetically arranged and contain the Imperial Statutes, Orders in Council, and Ordinances, public and private, in force at the time of their respective publications.)

5. And, lastly, the index to *The Laws of Mauritius Revised*, which was published in 1897 along with the work; it is also arranged alphabetically and contains a list of the Imperial Statutes applicable to the Colony, showing those parts that are applicable, with a reference to the subsequent Statutes by which they may have been amended.

VII.—Consolidation and Codification.

(*a*) *What steps have been taken to consolidate the whole or particular parts of the Statute Law, or to codify any branches of the law?*

No attempt has been made at a general consolidation or codification, but between the years 1887 and 1899 the following Ordinances, among others, have been passed for amending and consolidating the law on the subjects respectively dealt with by them: the Prisons, District Courts,

Merchandise Marks, Vagrancy, Harbour Dues, Civil Status, Police, Licence, Customs, Buildings, Quarantine, Penal Code, Amendment, Government Savings Bank, Education, and Common Forms Ordinances.

(*b*) *Does any machinery exist for this purpose. Is the work now in progress?*

No special machinery exists for the purpose; the work is generally done by the Procureur-General, with the assistance of the Law Committee or of some special Committee of the Council.

(*c*) *What Codes are now in force in the Colony? When and by whom were they prepared, and on what materials were they based?*

The three French Codes mentioned above;

The Code Decaen, also mentioned above, in so far at least as it has not yet been repealed;

The Code Farquar, a collection of the laws promulgated between 1810 and 1823, parts of which are still in force;

The Ordinance No. 6 of 1838, commonly called the "Penal Code," might also be mentioned; it is mainly borrowed from the French Penal Code.

VIII.—Subordinate Legislation.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as Rules or Orders made by the Governor, or a Minister or Department under the express authority of Statute or Ordinance? Is there any, and what collection of, or index to, such subordinate measures?

Various Ordinances authorise the making of Regulations or Bye-laws by the Governor in Executive Council; also by the Municipal Council, the Boards of Commissioners of Townships, the Board of Commissioners in Lunacy, the Railway Department, the Inspector-General of Police, the Director of the Medical and Health Department, etc.

These are generally submitted to the Governor in Executive Council, and sometimes laid on the table of the Legislative Council. They are published in the Government *Gazette*.

The judges of the Supreme Court are empowered by an Order in Council to make Rules of Court, which have to be transmitted to her Majesty for approbation or disallowance.

The Judge in Bankruptcy and any three District Magistrates, when appointed for the purpose by the Governor, are also empowered to make Rules.

There is no collection of all these subordinate measures; an index to them is to be found in *The Laws of Mauritius Revised*.

MARTIAL LAW IN NATAL.

So few are the modern authorities on the subject of Martial Law that any decision as to its nature and extent merits attention. Of the cases which have come before the Courts of South Africa the most important is the decision of the Supreme Court of Natal in *W. B. Morcom* v. *Postmaster-General.* The question came before the Court on an application by Morcom, an advocate of Pietermaritzburg, for an order interdicting the Postmaster-General and all other officers of the Post Office from opening or delaying, or causing or suffering to be opened or delayed by any other person, any letter directed to the applicant without his consent. The applicant relied on the Post Office Law, No. 22 of 1884, s. 42, which required every Postmaster to make a declaration that he would not willingly open or delay a letter except by the consent of the person to whom it was directed.

Affidavits were filed showing that on October 22nd, 1899, Martial Law was proclaimed in the Colony; that in December of that year instructions were given to the Postmaster authorising the military censors to examine letters; that the Postmaster-General delivered certain letters to Major Bird, the Military Press Censor in Pietermaritzburg, by his orders; and that the examination was instituted in the public interest and as a measure of military precaution. Among the correspondence referred to in the affidavits was a letter from the Prime Minister of the Colony, in which it was remarked: "The opening of private letters is an act hateful to the mind of every Englishman, and it should, therefore, only be resorted to under extreme necessity." There was also a copy of a minute of General Buller, in which he remarks: "I quite agree that there is a natural objection to opening letters, but it is also true that there is on the part of a General Officer Commanding a natural repugnance to having his plans disclosed or his men killed because otherwise estimable people like to write the latest news to their friends. . . . In war all sorts of things have to be done that one deplores."

The applicant, in supporting his motion, relied on the fact that the order to open letters was general. He cited, besides the well-known English authorities, *Willem Kok and others* (1879), Buch., 45, 66; *White* v. *Rudolph*, 1 Kotzé, 115.

Gallwey C.J., in dismissing the application, said:—

I am of opinion that the act complained of was incident to the enforcement of Martial Law, and accept the decision of Earl Grey that what is called Martial Law

is no law at all, but merely for the sake of public safety in circumstances of real emergency, setting aside all Civil Law and acting under the military power. Martial Law is nothing more than the will of the General who commands the Army.

In this case there was a necessity to prevent communication of the Army's movements; it was strictly exercised, and I cannot give the applicant the remedy he asks for.

Finnemore J. concurred with the judgment of the Chief Justice.

Mason J. took a different view—

Martial Law as used in English jurisprudence now, and as distinguished from Military Law, which is applicable to soldiers and those placed under similar discipline, means the exercise by military authorities of powers which are either vested in civil tribunals or officials or not granted to any one, and therefore, under ordinary circumstances at any rate, illegal.

There can be no doubt that there are occasions when such an extraordinary power may be lawfully employed, and it is, I think, a misuse of terms to speak of Martial Law as if it were an entire illegality, because sometimes it contravenes Statute Law and sometimes is without any legislative sanction.

The correct principle of adjudication appears to me to be this: the repulse of invasion, the suppression of rebellion, the due prosecution of a war are questions of paramount necessity to the State; the exercise of the powers requisite for these purposes is essential to the existence of a country, and the law of England and of this country allows such powers to be exercised for those purposes and those purposes alone, however wanting in ordinary statutory sanction they may be. It is not, of course, pretended that this doctrine is applicable to cases where legislation has expressly provided what can be done in a state of war or insurrection, but the general principle is clear: the duty of prosecuting warlike operations or repressing rebellion rests upon the military authorities, and any action which is really necessary for that object and which is not contrary to the dictates of humanity may be lawfully undertaken by them, even though it involve violent interference with the rights and even the liberty of the subject; the subject is entitled, however, to demand that these powers shall not be used recklessly, needlessly, cruelly, or immoderately, and to enforce that demand by resort to the civil tribunals, before whom he may require any persons infringing his rights to justify their action.

But it must be observed that necessity is the sole justification and the sole occasion for the use of such powers, and of that necessity the civil tribunals according to both English and local law are ultimately the sole judges whenever any subject claims redress for rights alleged to be infringed under Martial Law. In other words, any one claiming to be protected from the consequence of an otherwise illegal act by virtue of Martial Law must show the necessity of the act for the purposes of duly prosecuting the war and suppressing rebellion. The mere issue of a proclamation of Martial Law is no proof of that necessity and does not confer upon the military authorities any power which they did not fully possess before.

This question has usually been discussed with reference to the exercise by military authorities of powers vested in civil authorities, and it is universally laid down that such powers can only be assumed when and so far as the civil authorities are actually prevented by forcible resistance from dealing with the matter, but it seems to me that the principle also extends to cases in which, as in the present instance, no ordinary legal sanction exists in favour of either the military or the civil power.

There is no ordinary legal power, for example, to march soldiers over a man's farm or dig entrenchments on his land, but no one doubts that in case of need it is quite lawful to do so during military operations.

The press or letter censorship in the present application is defended upon averment that supervision of letters from districts near the front is necessary to prevent the dissemination, even innocently, of information concerning military movements. Now it is apparent that to restrict knowledge of the position or movements of his troops may be essential to a commander and thus absolutely necessary to the due and successful conduct of a campaign. The supervision of letters likely to contain such information which may reach the enemy seems on the face of it not an unreasonable precaution, and we have therefore to decide in this case whether such a necessity for supervision has existed or is likely to exist. I do not think we should undertake to decide such a controversial question of fact upon affidavits.

Those produced on behalf of the respondent allege the necessity, and, without deciding whether or not they are correct, I am not prepared to say that I am convinced that there may not be hereafter a necessity for a supervision of letters likely to contain military information useful to the enemy or information which may enable the plans of traitors to be frustrated.

The applicant has of course the right to bring an action, but the relief he seeks cannot be granted upon the present application.

REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1899.

TABLE OF CONTENTS.

I. UNITED KINGDOM.[1]

[*Contributed by* J. M. LELY, ESQ.]

Acts passed—Public General, 54; Local, 277; Private, 3.

OUT of more than three hundred public Bills submitted to Parliament in the two Sessions of 1899, only fifty-four received the Royal assent—fifty-one in the first Session and three in the second. They comprised new departures in the law of London government and London water supply, besides a Sale of Food and Drugs Act, three Education Acts, a Tithe Rent-Charge Rating Act, a Small Dwellings Acquisition Act, a Seats for Shop Assistants Act, a Summary Jurisdiction Act, and a Commons Regulation Act. Subjoined is an account of the more important of them, supplying, where necessary, the information which the Legislature gives by reference only to previous Statutes, frequently, as in the case of the London Government Act, themselves incorporating other Statutes in their turn:—

Army.—The Army (Annual) Act (No. 3, U.K.) continued for one year the elaborate Army Act which has since 1881 superseded the annual Mutiny Acts, declaring, as did those Acts, that a Standing Army is contrary to law and also that it is adjudged necessary that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of her Majesty's Crown, and that their number should be 184,153, exclusive of the Indian Army.

The Reserve Forces Act (No. 40, U.K.). provides that where a soldier entitled to be transferred to the Reserve is serving out of the United Kingdom, he may at his own request be transferred to the Reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, liability to be called out for annual training, or on permanent service or in aid of the civil power, or as to

[1] This summary of the principal public Acts of 1899 is a reproduction, with some alterations and additions, of the Introduction to the Continuation Volume for 1899 of *Chitty's Statutes of Practical Utility*, which Introduction was itself practically a reprint of an article by the writer in the *Times* of October 13th, 1899, entitled "Legislation of the Past Session."

Statutes applying to the whole of the United Kingdom are distinguished by the letters U.K. after the number; Statutes applying to England (including Wales) only are distinguished by the letter E. after the number; Statutes applying to Scotland or Ireland only will be found at the end of the summary.

any other matters, as may be prescribed by regulations under the provisions of the Reserve Forces Act, 1882, which empower her Majesty by order under the hand of a Secretary of State to regulate the government, discipline, and pay of the Army Reserve, and other matters connected with it.

Baths.—The Baths and Washhouses Act (No. 29, E.) removes the restriction—as regards London already removed in 1896—imposed by the Act of 1878, which first established public swimming baths, that the swimming baths might be closed or used for recreation or exercise or other public purposes from November to March, upon condition that they should not be used for music or dancing. In removing the restriction, the new Act enacts that the local authorities, before availing themselves of the removal, must obtain a proper music or dancing licence, that no portion of the premises is to be let otherwise than occasionally, that no money is to be taken for admission at the doors, and that the local authority having the management of the premises are to be responsible for any breach of the conditions on which the licence is granted which may occur during any entertainment given on the premises by their permission.

Commons.—The Commons Act (No. 30, E.), the greater part of which applies to all land subject to any rights of common and to all town and village greens, sets on foot a more simple procedure than that heretofore available for regulating any common or green, by enabling both urban and rural district councils to form and carry out schemes, subject to the supervision of the Board of Agriculture, with a view to the expenditure of money on the drainage, levelling, and improvement of commons. Lord Cross's Act of 1876, which had similar purposes, requiring provisional orders and confirming Statutes to carry them into effect, is not repealed, but is probably made unnecessary. All the provisions of that Act for the benefit of the neighbourhood of a common—that free access to views is to be secured, that objects of historical interest are to be preserved, that privileges of playing games are to be established, that roads are to be set out, and that "any other specified thing is to be done which may be thought equitable and expedient"—may form part of a scheme under the new Act. Opportunities are given for raising objections to any scheme, and compensation may be obtained under the machinery of the Land Clauses Acts for any interest taken away or injuriously affected. When a scheme has been approved, the common will come under the management of the district council, who may delegate their powers to a parish council, and a parish council may contribute to the expenses of management. The digging of gravel for highway purposes is prohibited, further grants or enclosures of commons, under the School Sites Act, 1841, and nine other specified Acts, are restricted to cases where either a special Act of Parliament has authorised them, or a Government Department requires them, or the Board of Agriculture consents to them, and occasion has

been happily taken to clear the Statute Book by the repeal of seven early Inclosure Acts passed from 1756 to 1840 inclusive. The origin and scope of the Act were well explained in an article in the *Times* of September, 1899, where it was pointed out that inclosure had ceased but regulation hardly begun, and that the great bulk of the commons of the country are still left untouched.

Corporate Joint Tenancies.—The Bodies Corporate (Joint Tenancy) Act (No. 20, U.K.) enables a body corporate to hold any real or personal property in joint tenancy in conjunction either with an individual or with other bodies corporate, providing also that such a joint tenancy is to be subject to the like conditions as attach to the holding of property by a body corporate alone, and that on the dissolution of the corporate tenant the property shall devolve on the other joint tenant. Thus is set aside generally the old rule—already set aside specially as regards stock transferable in the books of the Bank of England by the National Debt Stockholders' Relief Act, 1892—that a corporation and an individual cannot be joint tenants together. The main reason of the old rule, as may be seen from a perusal of Mr. Justice Mathew's judgment in *Law Guarantee and Trust Society* v. *Bank of England*, 24 Q.B.D. 406, which led to the passing of the Act of 1892, was that as a corporation does not die, an individual holding property in joint tenancy with it loses that right of survivorship which is one of the chief incidents of a joint tenancy, and in connection with the law of Trusts, the incident best known.

Criminal Law.—The Summary Jurisdiction Act (No. 22, E.) considerably extends the powers of justices of the peace—first conferred upon them in 1855—to deal with indictable offences summarily themselves instead of committing the offenders for trial at assizes or quarter sessions, as they have been for many hundred years bound to do except where particular Acts gave them summary jurisdiction by express words. The Act empowers justices to deal, with the consent of the accused, with any charge against an adult either of obtaining money or goods by false pretences where the amount obtained does nor exceed forty shillings, or of maliciously setting fire to a wood or heath where the damage done does not exceed that amount and where the accused is an adult pleading guilty or a "young person"—*i.e.*, a person between the ages of twelve and sixteen—whatever be the value of the things obtained or the amount of the damage done. More important still is a provision which extends to all offences except homicide the jurisdiction of justices to deal summarily with youthful offenders by their consent—a jurisdiction previously applicable only to the offences of larceny and embezzlement of small amounts. "Sir Matthew Ridley," wrote Sir Kenelm Digby in a Home Office circular explaining the Act, "trusts that this provision will remove some of the difficulties felt by justices in dealing with youthful offenders. The number of such offenders committed for trial will no doubt be materially reduced, and whenever a boy under fourteen consents

to be dealt with by a Court of Summary Jurisdiction, and is convicted of any indictable offence other than homicide, the Court will now have the option of ordering a birching." It may be remembered that both the Indictable Offences Act, 1848, and the Summary Jurisdiction Act, 1879, prescribe forms of address by justices to persons charged. The new Act repeats such a procedure in prescribing that an explanation of a false pretence be given to the person charged whenever justices propose to deal summarily with a charge of obtaining by false pretences. A long series of judicial decisions has established that the false pretence must represent that some non-existing fact exists, and the Act requires that the Court shall, after the charge has been read to the person charged, "state in effect that a false pretence means a false representation by words, writing, or conduct that some facts exist or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence," and may add any such further explanation the Court may deem suitable to the circumstances.

The Reformatory Schools Act (No. 12, E.) declares it to be expedient that where a Court orders a youthful offender to be sent to a reformatory school, that offender shall not in the first instance be sent to a prison, and adds a few words to that effect to the Reformatory Schools Act of 1893, which enables a Court to send to a reformatory any youthful offender below sixteen years of age convicted of an offence punishable by penal servitude or imprisonment, and either appearing to be not less than twelve or proved to have been previously convicted of a like offence. The new Act in no way affects s. 2 of the Act of 1893, by which the Court may direct that the offender be taken to a prison or other fit place until an order is made for his discharge or for his being sent to a school, such a direction not being equivalent in law to a sentence of imprisonment.

Education.—The Elementary Education School Attendance Act, 1893, Amendment Act (No. 13, E.) further raises to twelve years from eleven, to which it was raised from ten in 1893, the age at which total or partial exemption from school attendance can be obtained.[1] The Act provides also that school boards, or school attendance committees where no school board exists, may fix thirteen years as the minimum age for attendance in the case of children to be employed in agriculture, and that a child of twelve may obtain partial exemption by making three hundred attendances in not more than two schools during each year for the five preceding years, whether consecutive or not.

The Elementary Education (Defective and Epileptic Children) Act (No. 32, E.) enables school boards or other school authorities to ascertain what children in their districts are defective ("that is to say, what children,

[1] From a ministerial statement in the House of Commons on the second reading of the Bill which became this Act, it appears that the children who annually left school between the ages of eleven and twelve were only 23,000 out of 600,000, while those who became "half-timers" between those ages did not exceed 50,000.

by reason of mental or physical defect are incapable of receiving proper benefit from the instruction in the ordinary public elementary schools") and what children are epileptic ("that is to say, what children, not being idiots or imbeciles, are unfit, by reason of severe epilepsy, to attend the ordinary public elementary schools"), with the view of having defective children educated in special classes of the existing schools, and epileptic children educated in new special schools. Facilities for medical examination are to be provided, and parents may be compelled to avail themselves of them. A parental duty to provide instruction is to begin upon a child reaching seven years, in any place where a special class or school is within reach of the child's residence, and the period of education is to extend to the age of sixteen. Incorporating a provision of the Act of 1893 respecting blind and deaf children, the Act directs that the parent is to contribute towards the expenses of the child such weekly sum, if any (regard being had to the Free Education Act of 1891), as may be agreed upon between the school authority and the parent, or settled by a Court of Summary Jurisdiction in the case of difference, and just as, under the Act of 1893, the Education Department may give aid from the Parliamentary grant.

The Board of Education Act (No. 33, E.), which did not come into operation until April 1st last, establishes a Board of Education, to consist of a President, the Lord President of the Privy Council (unless appointed President), the principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer. The existing Vice-President of the Education Department of the Privy Council is also a member of the Board, but his office to be abolished on the next vacancy. The Board so formed takes the place of the Education Department, including the Department of Science and Art. Such powers of the Charity Commissioners and the Board of Agriculture as relate to education may be transferred by Order in Council to the new Board, which may also, either independently or after taking the advice of a "consultative committee," two-thirds of the members of which are to be persons qualified to represent the views of Universities and other bodies interested in education, inspect any school supplying secondary education and desiring to be so inspected. The committee and the Board are also to work together in framing an alphabetical register of teachers.

Electric Lighting.—The Electric Lighting Clauses Act (No. 19, U.K.) is framed upon the system, first set on foot in 1845 by the Companies Clauses, Lands Clauses, and Railway Clauses Consolidation Acts, of comprising in one general Act sundry provisions, usually introduced in numerous special Acts passed for the same purpose, with the laudable objects (as declared in the preambles of the Acts) of both avoiding the necessity of repeating such provisions in each of the several Acts and of ensuring greater uniformity in the provisions themselves. Electric lighting, though pretty fully dealt with by a general Act of 1882, has very frequently required further special

legislation, either by provisional order of the Board of Trade confirmed by Statute, or by Statute not preceded by such order. The new Act, in two short sections and a lengthy schedule, establishes a model code which is to be deemed incorporated with every future provisional order and every future special Act authorising the supply of electricity, save so far as it may be expressly varied or excepted by the particular order or special Act itself.

The code is contained in eighty clauses, incorporating bodily and applying to electricity numerous provisions of the Gasworks Clauses Acts of 1847 and 1871 as to breaking up streets, waste of gas, and injury to meters, binding promoters to furnish sufficient supply of energy within the area of supply, and to supply energy to public lamps within the distance of seventy-five yards from their distributing mains, and directing that the prices to be charged for energy supplied shall not exceed those stated in the special order or special Act, or, in the case of a method of charge approved by the Board of Trade, such prices as the Board of Trade determine on approving the method. Other clauses provide at great length for the appointment of electric inspectors and the testing of mains, the ascertainment by meters of the amount of energy supplied, the provision of a map of supply to be annually corrected, and the revocation of powers in case of insolvency or inability to carry on an electric undertaking at a profit.

Food.—The Sale of Food and Drugs Act (No. 51, U.K.) contains three provisions of great general importance, and numerous detailed amendments of the Margarine Act of 1887 and the Sale of Food and Drugs Acts of 1875 and 1879. A string of provisions directed against the importation of margarine and other foods insufficiently described upon their containers is followed by an authorisation of future Orders in Council applying such provisions to the importer of any adulterated or impoverished article of food not imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated. The Local Government Board in any matter appearing to affect the general interests of the consumer, and the Board of Agriculture in any matter appearing to affect the general interests of agriculture in the United Kingdom, may direct their officers to procure samples of any article of food for analysis. And it is declared to be the duty of every local authority entrusted with the execution of the Sale of Food and Drugs Act to appoint a public analyst, and to put in force the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis. It is added that the Local Government Board or Board of Agriculture may themselves institute proceedings if of opinion, after communication with a local authority, that that authority have failed in their duty in relation to any article of food and that their failure affects the general interests of the consumer or of agriculture as the case may be.

Amongst amendments in detail may be mentioned the new definition

of food, the main effect of which will be to apply the Acts newly to baking powder, the extension of the Margarine Act to margarine cheese, the restriction to ten per cent. of the allowable percentage of butter fat in margarine, the requirement that any person selling milk or cream from a can or other receptacle in any highway or place of public resort must have his name and address inscribed on the receptacle, and the penalising of the importation, except in containers showing their character, of margarine, margarine cheese, adulterated or impoverished butter, or condensed, separated, or skimmed milk. In connection with the last of these provisions there is a direction that the Commissioners of Customs shall, in accordance with directions given by the Treasury, after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the law.

Habitual Drunkards.—The Inebriates Act (No. 35, U.K.) enacts that the expenses of prosecuting habitual drunkards under the Act of 1898 shall be payable out of the local rates upon an order to that effect by the judge of assize or chairman of quarter sessions if the prosecution be on indictment, or by a Court of Summary Jurisdiction if the offence be one which is dealt with summarily, and also that the breach of any regulations respecting "certified inebriate reformatories" is to be summarily punishable. This Act is more worth notice for what it omits than for what it does, and there is no doubt that the Act of 1898 required much further development in the direction, for instance, of allowing habitual drunkards summarily convicted to be sent to State inebriate reformatories until a sufficient number of certified inebriate reformatories shall have been established.

Improvement of Land—The Improvement of Lands Act (No. 46, U.K.) fixes the period for repayment of money borrowed by a limited owner under the Improvement of Land Act of 1864 and its amending Acts for the purpose of improving land at such period not exceeding forty years as the Board of Agriculture, having regard in each case to the character and probable duration of the improvement, may determine; and enacts that the land charged for repayment may comprise not only the land improved, but also any other land of the same owner which, in the opinion of the Board of Agriculture, may properly be included in the charge. These improvements being frequently effected by money borrowed of companies incorporated by Statute, the new Act provides that a resolution passed by three-fourths of the shareholders of any such company to execute or advance money for improvements shall have the same legal effect as if the improvement were an improvement authorised by the special improvement Act relating to the company. The Board of Agriculture may apply the Act retrospectively to planting, and may extend the term for repayment within the limits authorised by the Act.

London.—The London Government Act (No. 14) divides the whole of the administrative county of London, exclusive of the City, into twenty-eight

boroughs, as substitutes for nearly one hundred vestries and other boards, naming as "areas which are to be boroughs" fifteen whole parishes and thirteen composite areas. The fifteen parishes named are Battersea, Bethnal Green, Camberwell, Chelsea, Fulham, Hackney, Hammersmith, Hampstead, Islington, Kensington, Lambeth, Paddington, Marylebone, St. Pancras, and Shoreditch, and the thirteen composite areas include, amongst others, the area consisting of the parishes of Mile End Old Town and St. George's-in-the-East, and the districts of the Limehouse and Whitechapel Boards of Works, including the "Tower of London and the liberties thereof," the Wandsworth District Board, the Parliamentary division of Holborn, the Parliamentary borough of Greenwich, and the "ancient Parliamentary borough of Westminster." For each of the boroughs so formed an Order in Council has established a separate council—on which, though women could and did serve on vestries, no women may serve—to consist of a mayor, aldermen, and councillors. Numerically the councils are generally smaller than the vestries, whose members rose in number from eighteen to a hundred and twenty in proportion to the population of their parishes. The number of aldermen is one-sixth of the number of councillors, the total number of aldermen and councillors in no case exceeds seventy, and the number of councillors, subject to this limit, is fixed by Order in Council, which authority has also fixed wards for each borough, assigning a number, divisible by three, of councillors to each ward.

After these comparatively simple provisions, the Act, in sub-ss. 4 and 5 of s. 2, falls back upon the complexities of incorporation by reference as follows :—

> Except as otherwise provided by or under this Act, the provisions of the Local Government Act, 1888, with respect to the chairman of the County Council and the county aldermen respectively shall apply to the mayor and aldermen of a metropolitan borough respectively, and for this purpose references in that Act to the chairman of the County Council and to county aldermen shall be construed as references to the mayor and aldermen of the borough.
>
> Except as otherwise provided by or under this Act, the law relating to the constitution, election, and proceedings of administrative vestries and to the electors and members thereof shall apply in the case of the borough councils under this Act and the electors and councillors thereof, and s. 46 of the Local Government Act, 1894, relating to disqualifications shall apply to the offices of mayor and alderman.

The so incorporated Local Government Act, 1888, itself incorporates the Municipal Corporations Act, 1882, in great part, and the Local Government Act, 1894, which mainly regulates the vestry and district board elections, leaves undisturbed much of the Metropolis Management Act, 1855, which reformed vestries and created district boards, so that the edifice of 1899 is reared on four main statutory foundations. The resulting electoral law may be very briefly stated as follows :—The electors of the metropolitan borough

councils will be all persons registered either as parochial electors or as Parliamentary electors, registration being in either case essential to the right to vote, but being allowable in every borough for which the qualification to vote exists. The parochial franchise is possessed by every man of full age, and by every woman of full age, whether married or single, who for twelve months preceding any 15th of July before the annual autumn registration has been an inhabitant occupier of some house or part of a house separately occupied within the borough, or has been an occupier of some land of not less than £10 yearly value within the borough and has resided during six months within fifteen miles of it. Husband and wife cannot both be qualified in respect of the same property. The Parliamentary franchise—the main distinctions between which and the local government franchise consist in its being restricted to men and in its being enjoyed by lodgers—may be enjoyed by occupying servants as well as by lodgers, and by £10 occupiers of land who have resided within seven miles of the borough during six months.

Any man qualified to elect councillors, or resident in the borough for the twelve months preceding an election, is himself qualified for election as councillor, mayor, or alderman, the mayor being a "fit person" elected by the council from amongst the councillors or possible councillors. There are disqualifications by bankruptcy, by convictions of crime, by having a contract with the council, and by absence from meetings for more than six consecutive months. Ministers of religion, who are disqualified for sitting on the councils of boroughs, are expressly qualified to be aldermen, and so are peers owning property in the borough.

Aldermen are elected by the councillors, and serve for six years, one-half going out every third year. Councillors are elected for three years, one-third of the councillors for each ward going out every year, but the time for the retirement of the first councillors elected will be fixed by Order in Council, and upon the request of any borough council the Local Government Board may make an order for the triennial retirement of all the councillors together. The election of the councillors, if contested, is by secret voting under the Ballot Act, each elector being entitled to give one vote and no more for each of any candidates not exceeding the number of councillors to be elected, and to vote only in the ward for which he is registered. Aldermen are elected by each voting councillor signing and personally delivering to the chairman of the council meeting a voting paper containing the names, etc., of the persons for whom he votes.

All powers, duties, property, and liabilities of each existing vestry and district board are transferred to the council of the borough comprising the area within the jurisdiction of such vestry and district board, the borough councils succeeding such vestries and boards just as the County Council succeeded the Metropolitan Board of Works.

Annual meetings are held in each November for the election of

mayor, and the mayor may at any time call a meeting, but otherwise the regulation of meetings is left to the discretion of the council. The quorum is one-third of the whole number of the council, and questions are determined by the majority of members present and voting. The appointment of a finance committee is obligatory, and other committees may be appointed with a quorum of three for any purpose which in the discretion of the council would thus be better regulated, "persons," and therefore women, who are not members of the council being eligible for a library committee. Any council also may concur with any other in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

Multitudinous details still remained for settlement, and the duty of settling them was delegated by Parliament to two carefully chosen bodies, one of them consisting of three special Commissioners, and the other of seven Privy Councillors. Amongst the matters to be dealt with by this delegation of Parliamentary powers were the naming, and, nominally, even the creation, of the new boroughs, the more exact formation of the twenty-eight areas primarily designated boroughs, and, subject to the limit of seventy, the fixing of the numerical strength of each council. In some cases, as in providing for the inclusion of detached parts of parishes into adjoining boroughs, the Privy Council Committee were bound to make an order; in others, such as in detaching Kensington Palace from Westminster and attaching it to Kensington, and in making provision for adapting the enactments relating to the registration of electors, the Committee had a discretion either to act or not as they thought fit.

The Metropolis Water Act (No. 7), passed upon an interim recommendation of the Royal Commission of which Lord Llandaff was chairman, empowers and requires the eight water companies which supply London with water, if so required by the Local Government Board, to submit schemes enabling them to supply each other with water from any sources of supply which any of them has power to use, and to construct such works as may in the opinion of the Board be necessary for that purpose, and also in cases of emergency to supply such water as may be required for the need of another company, and may be available after satisfying the requirements of the district of the supplying company.

The Metropolis Management Acts Amendment (Bye-laws) Act (No. 15) enables the London County Council to make bye-laws requiring contractors about to construct drains communicating with sewers to deposit with the sanitary authority of the district such plans as may be necessary for the purpose of ascertaining whether their operations are "in accordance with the statutory provisions relative thereto," which provisions are mostly to be found in the Public Health (London) Act, 1891. These provisions are an extension of a section of the Metropolis Management Act, 1855, which formerly empowered the Metropolitan Board of Works, and now empowers

the London County Council, to make bye-laws for regulating the dimensions and mode of construction, cleansing, and repairing drains communicating with sewers in London.

Marriage.—The Marriages Validity Act (No. 27, E.I.) effects an important amendment or declaration of the law (for it is not quite certain which) in relation to marriages of persons of whom one was in the case of a marriage in England resident in Ireland, or in the case of a marriage in Ireland resident in England, upon banns published in any church of the place in which such person was resident according to the law there prevailing, and not in the manner required for the publication of banns in the part of the United Kingdom in which the marriage takes place. It appears to have been doubtful whether before this Act, and since the disestablishment of the Irish Church in 1869, an English marriage could be validly solemnised on Irish banns, though pretty clear that an Irish marriage could have been solemnised on English banns. The new Act is retrospective as well as prospective.

Parish Councils.—The Parish Councillors (Tenure of Office) Act (No. 10, E.) provides for the election of parish councils triennially instead of annually as fixed by the Local Government Act of 1894, which first called parish councillors into existence. Parish councillors are to go out of office on April 15th, 1901, instead of in 1900, and the annual meetings are to be held on or within seven days of April 15th, instead of on or within seven days after April 15th as under the Act of 1894.

Poor Law.—The Poor Law Act (No. 37, E.) deals with two quite separate subjects—the care of pauper children and the detention of paupers in a workhouse, in each case extending the application of a previous Statute by reading into it additional provisions drawn up in statutory shape. The control of guardians over pauper children left helpless by the desertion or imprisonment of either parent is extended to cases where the guardians are of opinion that from mental deficiency or vicious life the parent is unfit to have control, or where the parent is incapacitated by detention as an habitual drunkard, or in case of death of both parents, or of the mother if the child be illegitimate. In any of these cases the guardians may at any time resolve that until the child is eighteen all parental rights of the parent in default, or, if the parents be dead, of both parents, shall vest in the guardians whether the child continues or not to be maintained by them. A similar resolution may also be passed, with consent of the parent, if the parent is permanently bedridden or disabled and is the inmate of a workhouse.

The powers of rescinding any such resolutions possessed by the guardians themselves are extended so as to allow a child to be handed over to a friend, or any society or institution for the care of children, and the guardians, as well as the parents of children, are granted a *locus standi* to invoke the interference of a Court of Summary Jurisdiction. A penalty is newly imposed on persons assisting pauper children to escape from the control of the

guardians, and the guardians are directed, in the case of any child maintained by them and with their consent adopted by any person, to cause the child to be visited twice a year for three years from the date of the adoption by some competent person, to report to them on the visit, with the view that the guardians, if so advised, may revoke their consent to the adoption and replace the child under their own complete control.

Public Health.—The Infectious Diseases Notification Extension Act (No. 8, E.) extends the operation of the adoptive Infectious Diseases Notification Act of 1889, whether already adopted or not, to the whole of England and Wales.[1] The Act of 1889 is one of four similarly adoptive extensions of the Public Health Act, 1875, which itself originated in adoptive Acts of 1848 and 1858, so that sanitary history is repeating itself. The form of adoption has been by urban and rural district councils, and up to March, 1898, the Act of 1889, which applied to London without necessity of adoption, had been adopted by 917 urban and 632 rural, and 40 port authorities. The Act, therefore, though theoretically it effects a great change, practically effects very little (its system having been always in force amongst twenty-eight out of twenty-nine millions of the population of England and Wales), with the exception that the power of revocation which co-existed with the adoptive law is now done away with. There are none but formal amendments of the Act of 1889. The diseases comprised in that Act are smallpox, cholera, diphtheria, membranous croup, scarlatina, scarlet fever, and other fevers—a list which may be added to by the local authority of any district. Of the diseases on the list, instant notice of attack has to be given by the head of the family to which the patient belongs to the district officer, to whom also every doctor in attendance is to send a certificate stating particulars.

Revenue.—The Finance Act (No. 9, U.K.), besides continuing the fourpenny duty on tea and the eightpenny income-tax, slightly increased the wine and spirit duties, considerably diminished the amount applicable to the repayment of the National Debt, and made numerous small changes in the stamp duties. The most important of these changes are as follows:—Five shillings per cent. is substituted for two shillings on the share capital of any company to be newly registered with limited liability, two shillings and sixpence per cent. is newly imposed on the loan capital of any local authority or company, the penny duty on letters of allotment and renunciation where the amount is not less than £5 is raised to sixpence, and there is a slight reduction of duty on foreign bills of exchange and on bills of exchange expressed to be payable not exceeding three days after date or sight. The stamp law as to policies of insurance against accident is expressed to include policies of insurance against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury when the

[1] The Act of 1889 applied to Scotland and Ireland, and will still be adoptive only in those countries.

annual premium on such policies does not exceed £1; and "sub-s. 1 of s. 52 of the Stamp Act, 1891, which relates to the definition of a contract note, shall be construed as if after the word 'principal' where it secondly occurs in that sub-section, there were added the words 'being a member of a Stock Exchange in the United Kingdom'"—an awkwardly expressed amendment of the law which appears to have the effect of doing away with any necessity of more than one contract note in respect of country and other Stock Exchange transactions, which as between members of the Stock Exchange and the public are one, though as amongst members of the Stock Exchange themselves they may be split up or passed on. As thus amended, the enactment of the Act of 1891 will now run thus:—

> For the purpose of this Act the expression 'contract note' means the note sent by a broker or agent to his principal (except where such principal being a member of a Stock Exchange in the United Kingdom is acting as broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security.

The duty on such contract notes in cases of stock of the value of £100 or upwards (formerly one penny in all cases), raised to sixpence in 1888, and left at sixpence in 1891, was further raised to a shilling in 1893. It may be added to the charge for brokerage.

Shipping.—The Anchors and Chain Cables Act (No. 23, U.K.) consolidates and simplifies with many small amendments in twenty-one sections and a lengthy schedule three Acts passed in 1864, 1871, and 1874, in connection with the testing and sale of chain cables and anchors, the Act of 1864, which was at first temporary only, declaring by its preamble that it is essential for the better security of lives and property afloat in sea-going ships to make provision for proper testing. This preamble, after the fashion of modern legislation, is omitted from the new Act, which plunges at once *in medias res* by enacting that "a maker of or dealer in anchors or chain cables shall not sell or contract to sell, nor shall any person purchase or contract to purchase for use on any British ship, any chain cable or any anchor exceeding in weight 168 lb. unless it has been previously proved in accordance with the Act," adding "that if any person acts in contravention of this section he shall be guilty of a misdemeanour." This section substitutes "for use on" for "for the use of" any British ship, but otherwise closely copies a section of the Act of 1874. With unusual vagueness the Act is silent here and elsewhere as to the maximum punishment for the misdemeanour in contravention of it. Contracts for sale are to be deemed to imply a warranty that proof has taken place, but no maker, dealer, or shipowner is to be relieved by the Act from any responsibility to which, but for the Act, he would have been subject. Provisions are made for the granting of Board of Trade testing licences to "the Committee of Lloyd's Register of British and Foreign Shipping for testing establishments at

London, Bristol, Tipton, Netherton, Saltney, Monkwearmouth, Sunderland, and Low Walker, or elsewhere," and twelve other testing establishments, and for denoting tests by stamping the anchors and chain cables, and a long schedule displays elaborate tables of the tensile and breaking strains to be used for testing, which are subject to alteration by the Board of Trade, but as yet have a statutory force.

Shop Seats.—The Seats for Shop Assistants Act (No. 21, U.K.) enacts that—

> In all rooms of a shop or other premises where goods are actually retailed to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind the counter or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room.

The fine for non-compliance with these provisions may go up to £3, and in the case of a subsequent offence to £5, with a minimum of £1.

The Act is to be read as one with the Shop Hours Acts, 1892 to 1895, and resort must be had to the Act of 1892 for provisions as to the appointment, and to the Act of 1893 for provisions as to the payment, of inspectors. The expression "goods" is a very comprehensive one and includes intoxicating liquors. The seats provided, if not behind the counter, must, it is submitted, be placed in a position suitable for their use by the female assistants, and though the Act speaks of a proportion of one seat to every three, a single assistant seems to be entitled to a seat.

Small Dwellings.—The Small Dwellings Acquisition Act (No. 44, U.K.) enables local authorities, with wide administrative powers, to advance money to residents in small houses for the purpose of acquiring the ownership of them. There are no powers of compulsory purchase. The residents must be also occupiers, and "ownership" is defined as being "such interest or combination of interests in a house as, together with the interest of the purchaser of the ownership, will constitute either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase." The purchaser may be any person whatever, and the purpose of purchase may be any purpose whatever except that of sale of intoxicating liquors, but the purchaser must either reside or intend within at least six months to reside in the house. The market value of the house must not, in the opinion of the local authority, exceed £400, but with this exception there is no express limit of size, position, or price. As to the amounts which may be advanced, the limits are precise, but the discretion of the local authority in ascertaining those limits appears to be unlimited and uncontrolled. "Any advance," it is said, "shall not exceed four-fifths of that which in the opinion of the local authority is the market value of the ownership; nor £200, or in the case of a fee simple or leasehold of

not less than ninty-nine years unexpired at the date of the purchase £300." The advance is to be repaid with interest "at such rate as may be agreed upon not exceeding ten shillings above the rate at which the local authority can at the time borrow from the Public Works Loan Commissioners," within thirty years at most, and the repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined.

As there is no power of compulsory purchase, so also there are no words obliging a local authority to make an advance when applied for, but there are many express restrictions upon their power of making one. Thus, they must be satisfied (1) that the applicant resides or intends to reside in the house and is not already a proprietor of a house to which the statutory conditions apply; (2) that the value of the ownership of the house is sufficient; (3) that the title is one which a mortgagee would accept; (4) that that the house is in good condition; and (5) that the repayment of the advance is secured by an instrument vesting the ownership in the local authority subject to redemption by the applicant. After acquisition of ownership the house is held subject to the conditions (1) that every sum due for principal and interest shall be punctually paid; (2) that the proprietor shall reside; (3) that the house shall be kept insured; (4) that it shall be kept in good sanitary condition and good repair; (5) that it shall not be used for the sale of intoxicating liquors or so as to be a nuisance; and (6) that the local authority may enter at all reasonable times to see whether these conditions are complied with. The ownership may be transferred with the consent of the local authority, which is not to be unreasonably withheld, and the house may with like consent be let furnished for not more than four months in any twelve. If default be made in complying with any of the statutory conditions, the local authority may either take possession of the house or order a sale of it—at once, if the default consists in not punctually paying the principal and interest of the advance, and within two months after notice not complied with in any other case of default. Such possession or sale is to be accompanied by a repayment of the sums paid to the local authority on account of repayment of the advance.

The local authorities are the county councils, the county borough councils, and also district councils under the following circumstances:—

If the council of any urban district not being a county borough, or of any rural district, pass a resolution undertaking to act under this Act, that council shall, subject in the case of the council of a district containing a population according to the last census for the time being of less than 10,000 to the consent of the county council, be the local authority in that district for the purpose of this Act to the exclusion of any other authority, provided that if the council of any district are dissatisfied with any refusal or failure of the county council to give their consent they may appeal to the Local Government Board, and the Local Government Board may, if they think fit, give their consent, and the consent so given shall have the same effect as the consent of the county council.

Solicitors.—The Solicitors Act (No. 4, E.) empowers the Master of the Rolls to reinstate any solicitor struck off the roll for wilfully acting as agent for a person not qualified to be a solicitor. The Consolidating Solicitors Act of 1843, re-enacting a provision of an Act of George II., has armed the High Court of Justice with the striking-off power in terms which have been judicially held to leave no discretion to the Court, and the Statute itself plainly directs that the offender, after being struck off, shall for ever after be disabled from practising. There is no express repeal of the Act of 1843, and the offending solicitor will have to be struck off the rolls as before on application to the Court and proof of the offence, but the Master of the Rolls in his sole and unqualified discretion will have power to replace him. The Act also facilitates the obtaining of new certificates to practise by solicitors applying for them after having been struck off the roll or suspended from practice.

Supreme Court.—The Supreme Court of Judicature Act (No. 6, E.) enacts that, if all parties to an appeal from the High Court of Justice to the Court of Appeal consent, an appeal to or motion in that Court may be heard by two judges instead of not less than three as, with regard to all appeal from final judgments, was provided in 1875 by the Judicature Act of that year. The right, if any, of further appeal to the House of Lords—which the Appellate Jurisdiction Act of 1876 gives in very comprehensive terms—is preserved, and there are cautious savings—(1) for infants and other parties under disability, whose consent to a weaker Court must be given by next friends or other representatives; and (2) for cases being reargued and determined, upon application by any party to the appeal, by three judges before appeal to the House of Lords, upon the two judges differing in opinion.

Telegraphs.—The Telegraphs Act (No. 38, U.K.), after empowering the Treasury to grant two millions for the purpose of the Telegraph Acts, allows borough and urban district councils, when licensed by the Postmaster-General to provide a system of public telephonic communication, to defray out of the local rates the expenses of exercising the powers conferred by the licence

Tithe.—The Tithe Rent-Charge (Rating) Act (No. 17, E.) enacts that—

> The owner of tithe rent-charge attached to a benefice shall be liable to pay only one-half of the amount of any rate to which this Act applies which is assessed on him as owner of that tithe rent-charge, and the remaining one-half shall, on demand being made by the collector of the rate on the surveyor of taxes for the district, be paid by the Commissioners of Inland Revenue out of the sums payable by them to the Local Taxation Account on account of the estate duty grant.

The Act applied to every rate made after September 15th, 1899. It will continue to operate only during the continuance of the Agricultural

Rates Act, 1896, by which a similar relief from half their rates was accorded to the occupiers of agricultural land—that is, only until March 31st, 1901. The rates to which the Act applies are those defined by s. 9 of the Act of 1896, except any rate which the tithe owner, as compared with the occupier of buildings, is liable to be assessed to in the proportion or one-half or less, and all rates usually comprehended in that term are comprehended in that definition.

About ten thousand of the clergy benefit by the Act, and the amount divisible amongst them is about £87,000 a year.

Scotland and Ireland.—The Fine or Imprisonment (Scotland and Ireland) Act (No. 11) assimilates the law of Scotland and of Ireland as to imprisonment in default of payment of fines to that of England, as it is to be found in s. 9 of the Prison Act, 1898. The English enactment is followed word for word to the effect that on payment of any part of a fine imposed by a Court of Summary Jurisdiction, and of the charges for which the prisoner is liable, the term of imprisonment to which a person has been sentenced for non-payment of the fine shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable.

Scotland.—The Private Legislation Procedure (Scotland) Act (No. 47) improves and extends the procedure for obtaining Parliamentary powers by way of provisional orders. Proceedings are to be commenced by petition to the Secretary for Scotland for the provisional order required. The two Parliamentary Chairmen—the Chairmen of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons—consider the question, and if they or either of them report that the provisions of the draft order do not relate wholly or mainly to Scotland, or are of such a character that they ought to be dealt with by Bill, the Secretary for Scotland is directed to refuse to issue the provisional order. If the Chairmen report that the provisional order may proceed, the Secretary for Scotland has to take the petition for it into consideration, and to direct an enquiry if there be opposition, "or in any case in which he thinks an enquiry necessary," by Commissioners sitting in Scotland "at such place as they may determine with due regard to the subject-matter of the proposed order, and to the locality to which its provisions relate." The sittings are to be held from day to day in public, and the order may be made as prayed for, or with modifications submitted by the Commissioners. Any order made requires confirmation by Bill, which, after introduction, is to be deemed to have passed through all its stages up to and including Committee, and is to be ordered to be considered in either House as if reported from a Committee.

The Public Libraries (Scotland) Act (No. 5) allows the authorities of any two or more neighbouring burghs or parishes to combine for any

period in carrying the principal Scotch Public Libraries Act, when adopted, into execution.

Ireland.—The Partridge Shooting (Ireland) Act (No. 1) alters the Irish partridge shooting season, fixed by the Irish Parliament so long ago as 1797, so as to begin on September 20th and end on January 10th. The new day of commencement is September 1st, and of ending February 1st, as fixed in England by the Game Act of 1831, which applies neither to Scotland nor Ireland.

The Congested District Board (Ireland) Act (No. 18) amends the Land Law (Ireland) Act, 1896, in the case of the purchase of an estate or part of it by the Congested District Board for the purpose of re-sale to the tenants, and subsidises the Board to the extent of not more than £25,000 a year, subject to such conditions as the Treasury may require.

The Agriculture and Technical Instruction (Ireland) Act (No. 50) establishes a Department of Agriculture in Ireland, and also, to assist that Department, a Council of Agriculture, an Agricultural Board, and a Board of Technical Education. Various moneys are placed at the disposal of the Department, including an annual sum of £12,000 as an equivalent for the salaries attached to the judgeships abolished or left vacant, and the Department is specially authorised to take proceedings (1) before the Railway Commissioners against companies withholding reasonable facilities for receiving, forwarding, or delivering traffic, or otherwise contravening the Railway and Canal Traffic Acts; and (2) before justices of the peace against persons selling deleterious or worthless feeding stuff for cattle, or otherwise misbehaving themselves in contravention of the Fertilisers and Feeding Stuffs Act, 1893.

The curious Expiring Laws Continuance Act (No. 34, U.K.) may best receive a passing notice here. This Statute, like some forty of its annual predecessors, continued until December 31st, 1900 (long before which date they were temporarily continued again by the similar Expiring Laws Continuance Act of 1900) thirty-two principal Acts, and forty-six enactments amending them. Among the temporary Acts thus annually continued are the Linen Manufactures (Ireland) Act, 1835 (which heads the list), the Poor Rate Exemption Act, 1840 (on which rests the exemption of personal property from rating), the Promissory Notes Act, 1863 (which legalises cheques for small amounts), the Militia (Ballot Suspension) Act, 1865, the Sunday Observation Prosecution Act, 1871 (which stands between the impecunious Sunday newsboy and the stocks), the Ballot Act, 1872 (the possible accidental omission of which from the bulky schedule to the Act might lead to an abortive General Election), the Employers' Liability Act, 1880, and the Corrupt and Illegal Practices Prevention Act, 1883. The practice of passing temporary Acts is nearly as old as Parliament itself, and both the Statute of Frauds and the Statute of Distributions were originally temporary.

It can hardly be said that our system of legislation is the best possible, either for placing good Acts upon the Statute Book or for keeping bad ones out of it. The following suggestions are now put forward in the hope that some of them at any rate, based mainly as they are upon the conclusions of a Parliamentary Committee which sat some thirty years ago, may have something in them:—

(1) The year of our Lord and a number should be substituted for the regnal year and chapter.

(2) Each Bill should be prefixed by a breviate or prefatory memorandum of its contents and scope, pointing out the existing law, the mischief, and the remedy proposed.

(3) The system of incorporation by reference should be thoroughly overhauled.

(4) An Act should come into operation on January 1st subsequent to the passing, in the absence of provisions to the contrary.

(5) The mode of publication of statutory rules should be marked out in each Act, and such mode of publication should be made constructive notice of its contents.

(6) A general Act should direct that all future public Acts are to extend to Scotland and Ireland, and should come into operation on the New Year's Day after their passing, in the absence of provisions to the contrary.

2. JERSEY.

[*Contributed by* E. T. NICOLLE, ESQ.]

Marriage with Deceased Wife's Sister.—The most important Law passed in the Island since 1896 is that dealing with this vexed subject. It consists of two articles. Art. 1 provides that every marriage contracted in the Island before the promulgation of the Law between a man and his deceased wife's sister will be considered lawful, and the issue of these marriages will be capable of inheriting, provided—

(1) That the contracting parties were domiciled in the Island at the time of the marriage;

(2) That the said marriage was legal in all other respects;

(3) That all formalities required by existing laws had been observed;

(4) That the said marriage has not been annulled by a competent tribunal.

Art. 2 provides that no marriage contracted in Jersey after the promulgation of the present Law between a man and his deceased wife's sister can be invalidated on this ground; and the children of such marriages cannot be for this reason declared illegitimate and incapable of inheriting, provided the contracting parties be domiciled in the Island at the time of the marriage.

Other Laws passed in 1896 dealt with hawking and first offenders.

Ballot.—Ballot Act, 1897, renewed and rendered a permanent Law.

Official Time.—Greenwich time adopted (1898) as the official Jersey time

Elementary Education.—An Act of 1899 makes this compulsory, and places the elementary education of the Island on a similar footing to what obtains in England. The schools are inspected by the English Government Department.

II. BRITISH INDIA.

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

[*Contributed by* M. D. CHALMERS, ESQ., C.S.I.]

Acts passed—25.

In 1898 the Indian Legislature exerted itself and passed the Code of Criminal Procedure. In 1899 the Legislature took a rest and added but little of importance to the Statute Book. Twenty-five Acts were passed, but most of them merely made small amendments in previous Acts, and call for no comment.

Stamps.—The Indian Stamp Act, 1889, No. 2, consolidates the previous Stamp Laws with small amendments. It is modelled on the English Stamp Acts, and only one provision calls for comment. S. 9 provides that "the Governor-General in Council may, by Rule or Order published in the *Gazette of India*, reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable." In England documents which require stamps fall mainly into two categories: they are either mercantile documents drawn up and used by the commercial classes, who are well acquainted with the commercial requirements of the Stamp Acts, or they are legal documents drawn up by solicitors. The requirements of the Stamp Laws cause a good deal of annoyance and inconvenience, but not much practical injustice. In India the conditions are very different. The Indian Government, having to deal with a backward Asiatic population in all stages of civilisation, has to preserve a dispensing power in order to avoid the perpetration of the grossest injustice.

Evidence.—The Indian Evidence Act, 1899, No. 5, is intended to remove a scruple felt by the courts as to the admissibility of expert evidence on the question of "finger impressions." In England the identification of criminals

is mainly provided for by the anthropometric system, but in India Mr. Henry, the late Inspector-General of Police in Bengal, has brought the system of finger-mark impressions to great perfection, and it is now being generally adopted for purposes of identification.

Contracts.—The Indian Contract Act, 1899, No. 6, deals with the vexed question of restraining the iniquitous dealings of usurious money-lenders. Both England and India were dealing with the same problem at the same time, but they have solved it in different fashions. The English Act, 63 & 64 Vict. c. 51, strikes at a particular class of persons. The Indian Act strikes at transactions, irrespective of the persons who may engage in them.

The English Act endeavours to define the class of money-lenders to whom it is intended to apply, requires them under penalties to register themselves as money-lenders, and then proceeds to put their transactions under the control of the courts. The Indian Act deals with the question by defining and slightly extending the provisions of the Contract Act as to undue influence and liquidated damages, and then adds certain illustrations founded on money-lending transactions. The most material provisions are contained in ss. 2 and 4, which are as follows :—

"2. S. 16 of the Indian Contract Act, 1872, is hereby repealed, and the following is substituted therefore, namely :—

"16. (1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

"(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

"(*a*) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other ; or

"(*b*) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

"(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it, or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

"4. (1) S. 74, paragraph 1, of the said Act is hereby repealed and the following is substituted therefore, namely :—

"74. When a contract has been broken, if a sum is named in the contract as to the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the

contract reasonable compensation not exceeding the amount so named, or, as the case may be, the penalty stipulated for.

"*Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

Petroleum.—The Indian Petroleum Act, 1899, No. 8, consolidates, with small amendments, the previous enactments relating to petroleum. English readers will remember the controversy which raged two years ago in England as to the flash point at which petroleum became a source of public danger. Cynics said that the whole controversy was a contest between American and Russian petroleum. Be that as it may, the Indian Government, after taking the best expert evidence it could obtain, have defined dangerous petroleum as meaning "petroleum having its flashing point below seventy-six degrees of Fahrenheit's thermometer."

Arbitration.—The Indian Arbitration Act, 1889, No. 9, is founded on the English Arbitration Act of 1889, 52 & 53 Vict., c. 49. In the first instance it is applied only to the presidency towns, but power is taken to authorise the Governor-General in Council to extend it by Order to other parts of India. Before this enactment the Indian law relating to arbitration was of a rudimentary character, and consisted of some rather obscure provisions contained in the Code of Civil Procedure. One deviation from the English rule deserves notice. Under s. 18 of the English Act the court has power to compel the attendance of any witness in the United Kingdom before an arbitrator. The corresponding clause in the Indian Bill was cut out, on the ground that such a provision might lead to great hardship in India, where distances are far greater and facilities of locomotion are much less than in England. It may not be unfair to bring a witness from Edinburgh to London to attend before an arbitrator, but it is a very different matter to compel a witness in Madras to attend before an arbitrator in Peshawur.

Tariff.—The Indian Tariff Act, 1889, No. 14, enables the Governor-General in Council to impose an additional import duty on bounty-fed imports. Its main object is to develop the Indian sugar cane industry, which may some day become an important source of profit to India. The additional duty is restricted to a duty equal to the net amount of the foreign bounty or grant.

Coinage.—The Indian Coinage Act, 1899, No. 22, provides, by s. 2, that "gold coins, whether coined at her Majesty's Royal Mint in England, or at any Mint established in pursuance of a Proclamation of her Majesty as a branch of her Majesty's Royal Mint, shall be a legal tender in payment or on account at the rate of fifteen rupees for one sovereign." This enactment marks a step in the progress which the Indian Government are making in the attempt to get back to a gold standard. Before Lord Dalhousie's time both gold and silver were legal tender in India, but Lord Dalhousie's Government, fearing an approaching depreciation in gold, disestablished that metal, and

made silver the sole legal tender in India. Exactly the opposite of the anticipated result took place. Silver became depreciated, and the rupee, which in the early 'seventies was worth *2s. 1d.*, sank a few years ago to about a shilling. The result was to throw the whole of Indian finance into confusion. The first step taken by the Indian Government was to stop the coinage of rupees, and thereby to raise the value of the rupee to about *1s. 4d.* Now the next step has been taken, and gold is made legal tender at that rate.

Kirk Sessions.—The Church of Scotland Kirk Sessions Act, 1899, No. 23, incorporates every kirk session which has been or may hereafter be duly constituted to be a church court for ecclesiastical purposes in pursuance of an Act of the General Assembly of the Church of Scotland. The object of the Act is to enable kirk sessions to hold property and otherwise act as a corporation.

Court of Wards.—The Central Provinces Court of Wards Act, 1899, No. 24, merely consolidates, with slight amendments, the existing enactments relating to the Court of Wards in the Central Provinces. It enables the Court of Wards, with the previous sanction of the local government, to assume the superintendence of the property of any landowner owning land within the local limits of its jurisdiction who is disqualified to manage his property (s. 4).

By s. 5 the following persons are deemed to be disqualified to manage their own property, namely:—

(*a*) Minors;

(*b*) Persons adjudged by a competent civil court to be of unsound mind and incapable of managing their affairs;

(*c*) Persons declared by the local government to be incapable of managing their property owing to—

(i) Any physical or mental defect or infirmity;

(ii) Their having been convicted of a non-bailable offence and being unfitted by vice or bad character; or

(iii) Their being females.

The disqualification of females, of course, mainly applies to cases where, by the Oriental custom of *purdah nishin*, ladies are not allowed to appear or go about in public.

Punjab Courts.—The Punjab Courts Act, 1899, No. 25, amends the existing Punjab Courts Act by placing some further restriction on the right of second appeal. The question of appeal in India is a difficult one. On the one hand, the judges in the inferior courts are not trained lawyers, and on many grounds it is advisable that their decisions should be open to review. On the other hand, the almost unlimited right of appeal which now exists gives rise to great abuses and leads to almost endless litigation, in which the longer purse has an unfair advantage. Taking the whole number of cases dealt with by the Indian courts, and comparing them with the cases dealt

with by the High Court and county courts in England, statistics show that there are about three hundred appeals brought in India for every single appeal brought in England.

2. MADRAS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

Acts passed—4.

Registration of Births in Rural Areas (No. 1).—By this Act, in the case of births, the duty of giving information is placed upon the father; failing him, upon the midwife; failing her, upon the adult male members of the family in general and any one having charge of the child; and failing these, upon the mother. The period allowed is two weeks, and the information may be written or oral. A fine of ten rupees is the penalty for non-compliance, but prosecutions are to be only under official approval. The Government of Madras has power to extend the provisions of the Act to any area that may be suitable.

Court of Wards (No. 4).—This Act enables the Government to extend the Court of Wards' management to estates of persons who apply to have this done. Other provisions relate to civil suits, limitation, and procedure, also to the release of a property from management and other matters.

The other Acts are not of general interest.

3. BOMBAY.

Acts passed—5.

Adulteration of Food (No. 2).—This Act is on the lines of the English Food and Drugs Act, 1875. Whoever sells, to the prejudice of the purchaser, any article of food which is not of the nature, substance, or quality of the article demanded, is made liable to a fine of one hundred rupees for the first offence, and five hundred for the second. If, when ghee is asked for, an article is supplied not exclusively derived from milk, this is prejudice to the purchaser unless notified to him. The Act may, by notification of the Governor in Council, be made applicable to articles other than articles of food.

4. LOWER PROVINCES OF BENGAL.

Acts passed—3.

General Clauses Act (No. 1).—This enactment defines the meaning of terms and provides general rules of construction of laws of the Bengal Council.

Calcutta Municipality (No. 3).—This is a new Municipal Code, taking

effect from April 1st, 1900. It comprises six hundred and fifty-two sections, with many sub-sections, and twenty-one schedules. The following are the more noticeable points of this law:—

It takes away the power which the native population had acquired since 1876 under the elective system of choosing a large majority of the municipal commissioners; and provides for representation of *interests* instead of mere representation of numbers. Thus ss. 6–8 provide the constitution of the municipal corporation to be fifty commissioners, of whom half are to be elected by the wards of the city, and the other twenty-five are to be chosen by the Provincial Government, the mercantile community, the port conservators, and so on. S. 23, etc., empowers the local Government to require the municipality to take action in case of need, and (s. 525) the chairman is enabled to take action in an emergency for meeting serious epidemic diseases. S. 636, etc., provides for changes in the area and limits of the municipality. In this matter the line taken is towards eliminating "bustee":—that is to say, native suburban village areas, and including the Howra tract, which adjoins the docks and ports and rail-head.

The other Act is a short repealing Act.

5. NORTH-WEST PROVINCES AND OUDH.

Acts passed—3.

Inspection of Steam-Boilers (No. 1).—The Government may by this Act appoint inspectors to examine and license boilers and prime movers—locomotives or steam-vessels are excluded—and may prohibit the use of such as are unlicensed. Use of an unlicensed boiler is punishable with a fine of five hundred rupees.

Court of Wards (No. 3).—This Act amends and consolidates the law relating to the Court of Wards. "Ward" in this connection means a proprietor of any beneficial interest in a "mahál" or "taluga" whose person or property is under the superintendence of the Court of Wards, by reason of his being disqualified to manage it himself. Provision is made for the Court of Wards assuming the superintendence in such a case, ascertaining debts, and fixing the allowance to be made for the expenses of the ward and his family and dependents.

6. PUNJAB.

Riverain Boundaries (No. 1).—This Act—which represents the only legislative effort of the year—provides for the Collector fixing the boundary line between estates subject to the action of a river, and where necessary awarding compensation.

7. BURMA.

Acts passed—4.

Gambling (No. 1).—This is a very drastic Act for the suppression of gambling. A police officer is empowered to arrest without warrant any person who in any place to which the public have access solicits stakes for the game of "ti," plays for money or other valuable thing with any instrument of gaming, sets birds or animals to fight, or aids and abets such fighting. The penalty is Rs. 50, or a month's imprisonment. Premises suspected to be gaming-houses may be entered and searched, and if instruments of gaming are found thereon, it is to raise a presumption of the house being a gaming-house.

Keeping a gaming-house renders the proprietor liable to a fine of Rs. 200, or three months' imprisonment. "Instruments of gaming" is given the widest meaning, but is there any definition which will exhaust the ingenuity of the gambler?

Rangoon Police (No. 4).—This Act constitutes and regulates the police of Rangoon Town, and enumerates the duties of a police officer. Punitive police may be quartered in dangerous areas.

There are special provisions for the apprehension and punishment of reputed thieves and vagabonds (persons found between sunset and sunrise armed and unable to give a satisfactory account of themselves, or loitering in a bazaar, or disguised), also for regulation of processions with music and torches, for the driving of elephants or wild animals, beating drums, bathing in public, begging, indecent exposure of personal deformity, etc., and other picturesque details of Oriental life. Stray dogs may be destroyed.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* F. H. M. CORBET, ESQ.]

Ordinances passed—12 (between March 2nd and December 18th, 1899).

Waste Lands.—Ordinance No. 1 marks a stage in the attempt by the Legislature to deal with the growing evil of encroachments on Crown lands and to establish machinery for the cheap and rapid settlement of disputed titles to unoccupied land. This policy has elicited much opposition: *vide Hansard's Parliamentary Debates*, 1899, *passim*, and the Blue Book on the subject published in June, 1899.

Public Servants' Debts.—The Public Servants (Liability) Ordinance,

1899 (No. 2), which is to continue in force until the end of 1904, protects every public servant not drawing more than 300 rupees a month as the salary of his fixed appointment from any action for

(1) Money lent;

(2) Money due on a guarantee; and

(3) Money due on a negotiable instrument;

and makes void all proceedings and documents in contravention of the Ordinance.

Volunteers.—Ordinance No. 3 amends the Ordinances of 1861 and 1890 relating to volunteers and the volunteer reserve, making all volunteers when warned for actual duty subject to the Army Act, 1881, in regard to any military offence of which they may be guilty, and further provides for the custody of arms and accoutrements, their surrender by volunteers on leaving the corps, and the recovery of fines and subscriptions. It requires the members of the reserve to render themselves efficient once in three years.

Pilots.—The employment of pilots is made obligatory by Ordinance No. 4 in ports proclaimed under it, and provides for pre-payment of their fees, whilst making them liable to fines for refusal, neglect, or delay, or for rendering themselves incapable "by drunkenness or otherwise," or for injuries to vessel, tackle, or furniture, and it gives them power within the limits of the port to supersede in the charge of any vessel any person not a pilot. The maximum liability of a pilot for neglect or want of skill is fixed at 1500 rupees.

Opium.—Under Ordinance No. 5 no one may sell opium either wholesale or retail, or possess more than one pound of the drug, without a licence. A wholesale licence costs 250 rupees, and a licence to possess opium costs 50 rupees, whilst a licence to sell by retail is put up to auction by the local official, who may not offer more than the number of licences prescribed by the Governor, but can fix the upset price, and may in his discretion refuse to grant a licence to the highest bidder. The local official may impose such conditions as he thinks fit, in addition to those fixed by the Ordinance, which are: that no opium may be sold between 8 P.M. and 6 A.M. and not more than 180 grains "at any one time to any individual"; that no opium may be consumed on the premises, or sold to any individual "apparently under the age of fifteen years"; that it may not be adulterated or deteriorated, or bartered away for wearing apparel or other goods, and that daily accounts must be kept showing the quantities received, sold, and on hand. The local official may revoke a licence at any time "for any reason whatsoever" on repayment of a certain proportion of the price. The sale of bhang or ganja is absolutely prohibited. A maximum punishment of six months' rigorous imprisonment and a fine of 100 rupees is authorised upon a second conviction, and half the amount of any fine realised may be paid to the informer. Exceptions are made in favour of medical practitioners, chemists, and druggists *bonâ fide* selling or possessing

opium for medical purposes, and in favour of Government hospitals and dispensaries.

Shipping Casualties.—In pursuance of s. 478 of the Merchant Shipping Act, 1894, Ordinance No. 6 gives jurisdiction to the District Courts to make enquiries as to shipping casualties and the conduct of officers, and to adjudicate thereon.

Habitual Criminals and Tickets of Leave.—Ordinance No 7 provides that where an accused person is suspected of having been previously convicted, the police magistrate shall have power to grant remands to enable the accused to be identified and measured, and that if it appear that he has been twice or oftener convicted and has been sentenced to terms of rigorous imprisonment aggregating more than six months, the police magistrate must commit to a superior Court, and in such case the jurisdiction of the District Court is enlarged, so that it may sentence the accused to four years' rigorous imprisonment in addition to any punishment, other than imprisonment, to which he may then be liable. Also where a previous conviction has been proved, the Court may order that the convict be under police supervision for seven years after his discharge, subject to the provisions relating thereto therein contained.

Cemeteries.—The Cemeteries and Burials Ordinance, 1899 (No. 9), repeals eight earlier Enactments and consolidates the laws on the subject. It makes provision for general cemeteries and for burial and cremation grounds.

Post and Telegraph.—Ordinance No. 10 amends the Ceylon Postal and Telegraph Ordinance, 1892, by making better provision with regard to the discovery and disposal of dutiable articles sent through the post, the protection of the revenue from postage stamps, and the carrying of telegraph wires over private land, and the erection of posts and the cutting down of trees thereon.

2. STRAITS SETTLEMENTS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—22.

Explosives (No. 1).—By this Ordinance "explosive" is defined, with power to enlarge the definition, and the Governor in Council is empowered to make rules as to licensing the manufacture, use, sale, and storage of explosives. In the case of specially dangerous explosives their importation may be prohibited.

Banished Persons (No. 2).—This provides for the safe custody of persons banished from Protected Native States and Johore while passing through the Colony.

Paper Currency (No. 4).—It has been found necessary to supplement

the issue of notes by the banks in this Colony by an issue of Government paper currency. This Ordinance gives the requisite powers.

Lepers (No. 5).—Lepers may by this Act be prohibited from carrying on certain callings, vagrant lepers detained, and immigrant lepers prevented from landing. Leper asylums may be established.

Defence (No. 6).—This provides for the appropriation annually of a sum of twenty per cent. of the colonial revenues to the Imperial Government as a contribution for the defence of the Colony.

Pilgrim Ships (No. 9).—These are to pay certain fees at Aden.

Women and Girls' Protection (No. 13).—A penalty is imposed on the keeper of a brothel for permitting a woman suffering from a contagious disease to remain there. Brothels may be closed on complaint of the police. Male persons living on the proceeds of prostitution are liable to three months' imprisonment.

Supply.—Nos. 16, 18.

Plague (No. 20).—Where plague has broken out the Governor may proclaim a plague area. Any person leaving such infected area may be examined and "susceptible articles" (enumerated) disinfected before exportation.

3. HONG-KONG.

[*Contributed by* ALEXANDER MANSON, ESQ.]

Ordinances passed—39.

Naturalisation.—Ten of these are for the naturalisation of Chinamen as British subjects "within this Colony." In all these instances the person named—

(*a*) Has resided in the Colony for some considerable time;
(*b*) Has property there;
(*c*) Has some substantial position or business there;
(*d*) Has declared his intention of residing there permanently; and
(*e*) Has petitioned to be naturalised.

The Regulation of Vehicles.—No. 6 enacts the rule of the road and other matters for the regulation of wheeled traffic; it gives power to make bye-laws, and authorises police officers to arrest without warrant. Penalties are not to exceed $50, or six months' imprisonment in default of payment.

Prisons (No. 7).—This repeals some previous enactments and amends and consolidates the law. It provides for setting apart sites and buildings, appointing officers, and other matters of gaol administration, by orders of the Governor, who also is empowered to frame rules. Separate cells are to be provided for prisoners, who are to be prevented from holding communication with one another. Male and female prisoners are to be imprisoned in separate buildings out of sight and hearing of one another. Prisoners under

sixteen are also to be kept separate from older prisoners, and debtors from criminals. Cells must be approved by the Governor. Provisions are made for a proportional reduction of a term of imprisonment in default of payment of fine when part payment has been made (s. 20, which compares with s. 9 of 61 & 62 Vict., No. 41).

Church of England Services (No. 8).—A church corporate body is constituted, with powers to appoint chaplains and officers, and to make regulations, subject to approval by a meeting of seat-holders and subscribers of the church, also with power to sue for moneys due. SS. 11 and 12 reserve a right to the garrison troops to use the church and provide for a Government subsidy to the church funds.

Solicitors (No. 9).—The solicitor's charging order for costs on property recovered or preserved, with which we are familiar in England, is here introduced into Hong-kong, also power, equally familiar, for solicitor and client to agree as to the former's remuneration. Costs under such an agreement are not to be taxable unless the agreement is an improper one. A solicitor-mortgagee may charge profit costs.

No. 32.—This also relates to solicitors, and provides that a taxing officer may have regard in taxing costs to the skill, labour, and responsibility involved.

New Territories.—No. 10 excludes the operation of some twenty-four Laws in the tract of country added to the Colony by the Convention of June, 1898.

Ordinances Nos. 11 and 12 provide for the administration of the said new territories.

Slaughter-Houses and Markets (No. 22).—Severe penalties are by this Ordinance enacted against any one counterfeiting the official mark on beef or mutton. Carcases not bearing such official mark may be destroyed.

Opium (No. 21).—The concealment or secretly placing any raw or prepared opium in any part of any steamship is by this Ordinance made punishable with a fine of $500, and in default, imprisonment.

Crown Lands (No. 30).—This Ordinance empowers the Governor, on paying an assessed compensation, to acquire or resume land of any description within the limits of the Colony for any public purpose. "Public purpose" includes the compulsory resumption of insanitary properties for erecting improved dwellings thereon or for any object connected with the naval or military forces of the Colony.

Women and Girls' Protection (No. 31).—The trafficking in women and girls and offences against them was fully dealt with in the Ordinance of 1897 (No. 9). Further provisions are added by the present Ordinance: a penalty is imposed on the occupier or keeper of any brothel who permits any woman suffering from any contagious disease to be or remain in such brothel for the purpose of prostitution. Knowledge in such case on the part of the occupier or keeper need not be proved by the prosecution.

Disorderly houses and brothels may be closed on complaint by the Superintendent of Police or the Registrar-General. The police have power to enter suspected premises without notice and interrogate the inmates; ships may also be searched for women or girls. Male persons living on the earnings of prostitution may be arrested and banished.

Health (No. 34).—A variety of sanitary regulations are here laid down as to cubicles, ventilation, mezzanine floors, and cocklofts, the height of buildings, open spaces, lighting of back streets and lanes, and other conditions of health and social order, and power is given to a magistrate to close insanitary premises and remove illegal structures. In the case of any offending corporation, the secretary or manager is to be liable.

Merchant Shipping (No. 36).—This is the most important enactment of the year. It consolidates and amends the existing law and incorporates much of the English Merchant Shipping Act, 1894. It is divided into eleven parts:

(i) Registry.
(ii) Masters and Seamen.
(iii) Passenger Ships.
(iv) Safety.
(v) Marine Courts.
(vi) Control of Waters of Colony.
(vii) Lighthouses, Buoys, and Beacons.
(viii) Importation and Storage of Explosives.
(ix) Small Steamships and River Steamers.
(x) Junks and Small Boats.
(xi) General.

Companies (No. 38).—This is an Ordinance closely analogous to the English Companies Act, 1898, and empowers the Court to grant relief where shares have been issued for a consideration other than cash, but no contract has been registered owing to accident or inadvertence.

4. FEDERATED MALAY STATES.

[*Contributed by* EDWARD MANSON, ESQ.]

These States exhibit a remarkable legislative activity.

(i) PAHANG.

In this State Acts have been passed dealing with the registration of fire-arms, police pensions, the Post Office, negotiable instruments, statutory declarations, buffaloes, banishment of dangerous persons, mining, telegraphs, jungle produce, dealers in second-hand goods, prisons, irrigation, and arbitration between persons of Chinese nationality.

(ii) PERAK.

Here, as in Pahang, Acts have been passed dealing with negotiable instruments, statutory declarations, mining, Chinese arbitration, prisons, buffaloes, pensions, and, in addition, with contracts, notes and coins as legal tender, agreements for leases, lights and harbours, and dangerous societies.

(iii) SELANGOR.

Here, also, Acts have been passed similar to those of Pahang, and, in addition, Acts dealing with the "Tai-wa" (or Hospital) Fund, railways, the registration of titles, the regulation of vehicles, mineral ores, opium duties, dangerous societies, labourers' wages, and frontier criminal justice.

(iv) NEGRI SEMBILAN.

Acts similar to those in Pahang have been passed in this State, and in addition thereto Acts regulating vehicles, the registration of bills of sale, pensions to officers, coins and notes constituting a legal tender, criminal justice, the suppression of dangerous societies, contracts, labourers' wages, Court of Senior Magistrate, lighthouses, junks and fishing-boats, pedlars and hawkers, extradition, and registration of marriages and divorces of Mohammedans.

IV. AUSTRALASIA.

1. VICTORIA.

[*Contributed by* HENRY E. GURNER, ESQ.]

63 Victoria, 1899–1900: Acts passed—53.

Australian Federation (No. 1603).—Of the Acts passed during this Session of Parliament, the Australian Federation Enabling Act is the one of paramount importance, not only to the Colony of Victoria, but to the United Kingdom, as well as the remaining Australian Colonies. It has been thought unnecessary in the present review to deal with it, as it now appears as formally passed by the Imperial Legislature and is set out at length in the Imperial Statutes. Statute No. 1603 of 63 Victoria is the Victorian Statute entitled the Australian Federation Enabling Act, 1899.

Parliamentary Elections: Plural Voting (No. 1606).—By No. 1606, entitled the Constitution Act Amendment Act, 1899, plural voting in the elections of Members of the Legislative Assembly is abolished. By s. 4, sub-s. 1, it is made unlawful after the expiration or dissolution of the existing Legislative Assembly for any person on one day to vote in more than

one electoral district at any election or elections. By sub-s. 2 a maximum punishment of a fine of £50, or three months' imprisonment, is imposed for the offence, and by sub-s. 3 any votes so improperly given are absolutely void. By s. 5 the returning officer is directed to ask the elector whether he has already voted, and s. 6 prescribes that if such elector omits or refuses or declines to answer such question distinctly in the negative, he is subject to a maximum penalty of a fine of £20, or one month's imprisonment, and by s. 7, if he wilfully answers falsely, the fine is £50, or three months' imprisonment.

Law of Evidence.—No. 1611, to amend the Law of Evidence, directs that all Courts shall take judicial notice of the signature of the Deputy Registrar-General when appended to any certificate or other official document.

Vermin (No. 1615).—An Act to amend the Vermin Destruction Act, 1890. Every council of every municipality shall pay 2*s.* 6*d.* for the destruction of every fox within its territory. By s. 4 the Governor in Council shall repay them half the sum so paid, and by s. 5 they are allowed to pay a larger reward out of their own funds, but a provision is inserted that the Government shall not pay more than 1*s.* 3*d.* per head for each fox so destroyed.

Equipment of Contingent for Foreign Service.—No. 1619, entitled the Victorian Military Contingent Act, 1899, is an Act to remove any doubts as to the power of the Colony to provide forces for service outside the boundaries of the Colony, such doubts arising under s. 177 (44 & 45 Vict., No. 58, s. 177) of the Army Act, 1881 (Imperial Statute). By s. 4 a sum of £30,000 was provided by the Colony for their equipment, transport, payment, and maintenance.

Second Victorian Contingent.—No. 1627 provides for a second Victorian contingent for South Africa and £35,000 is set apart for its equipment, etc.

Income Tax (No. 1635).—The Income Tax Act, 1900, by s. 4 provides for the imposition of the tax on all income derived by any person from personal exertions:

(*a*) 4*d.* in the £ up to £1,200,
6*d.* „ „ £2,200,
8*d.* on all sums over that;

on income derived from the produce of property:

(*b*) 8*d.* in the £ up to £1,200,
1*s.* „ „ £2,200,
1*s.* 4*d.* over that amount.

Municipal Contributions to South African Contingent (No. 1640).—The South African Contingents Constitution Act, 1900, makes it legal for any municipality or any bank or incorporated company to contribute out of its

funds to any fund raised in aid of the Victorian contingents or their wives and families.

Land (No. 1641).—The Land Act, 1900, amends the Land Act of 1890 and the numerous Acts amending the same, and is of purely local interest.

State School Teachers.—No 1642 deals with the classification and payment of the State school teachers.

Obscene and Indecent Advertisements.—No. 1643, an Act to amend the Crimes Act of 1891, is an Act to deal with obscene and indecent advertisements. In the definition clause, "publishing," in addition to its meaning at Common Law, is to include affixing or inscribing on any building, house, wall, hoarding, gate, fence, pillar, board, tree, or thing so as to be visible to a person. By s. 3 any picture or advertisement, or any printed or written matter in the nature of an advertisement, is to be deemed to be of an indecent or obscene nature if it refers or relates to venereal disease or the relation of the sexes, or to pregnancy or to any diseases peculiar to women, and by s. 4 every person who prints, publishes, distributes, or sends by post, or has in his possession for the purpose of distributing, any newspaper containing any picture or advertisement of an indecent nature shall be liable on conviction for a first offence to a maximum fine of £20, or three months' imprisonment, and for a second or subsequent offence to a fine of £100, or twelve months' imprisonment. By s. 5 any person who distributes or attempts to distribute by means other than a newspaper is liable to a maximum fine of £10, or to be imprisoned for any term not exceeding one month for the first offence, and £50, or six months, for the second or subsequent offences. By s. 6, when a paper is owned by a company, the printer and publisher are made liable for these penalties. By s. 7 the Postmaster-General is empowered to stop such indecent matter on its way through the post; by s. 8 any newspaper is prohibited from being imported into the Colony as if it were specified in the Customs Act of 1890 (s. 49); and by s. 9 no prosecution under this Act can be taken except by the police, and then under written authority of the Chief Commissioner of Police, and no such written authority is to be given until any person who distributes any newspapers or advertisement by post containing indecent or obscene matter has been warned in writing by a member of the police force that he will be prosecuted under the Act if after this warning he continues his publication or distribution.

Gold Extracting Patents.—No. 1648 enables the Government to purchase for a sum not exceeding £20,000 certain patents and other rights relating to the extraction of gold and silver by the cyanide process in order to render them available for mining purposes at reasonable rates of royalty. By s. 9 the Minister of Mines may issue licences for the use of the process, which shall be in such form and under such terms and conditions as prescribed, the licensee paying such royalty as is prescribed on all gold and silver produced from any mine, such royalty being not less than

one and a half and not more than two and a half per cent. on the total value of gold or silver produced from the mine. By s. 10, as soon as the sum not exceeding the £20,000 paid for the patents has been recouped by the royalties, then no licence shall be needed and royalties shall cease to be paid.

Port Dues (No. 1650).—The Marine Act, 1900, lowers the rate of duty paid by a ship in ballast at any Victorian port, and admits certain vessels free of any tonnage duties, *viz.*, those in distress calling for the purpose of being docked or filling coal bunkers, or calling for orders or provisions, without discharging or taking on board any cargo or passengers, or those employed in mission work, or pleasure yachts.

Water Supply (No. 1615).—The Water Act, 1900, is an Act of 173 sections dealing with waterworks trusts. The election of the commissioners, the appointment of officers, the borrowing and rating powers and the various rights and duties of the commissioners and the people to whom they supply the water—this all seems a matter so purely local in its dealing that it is not proposed to deal with it seriatim.

Inspection of Meat (No. 1652).—The Meat Supervision Act, 1900, provides for meat inspectors. By s. 12, at the expiration of six months after certain meat areas have been constituted, no person is to be allowed to slaughter an animal or dress any carcass at any place except a public abattoir or a private slaughterhouse licensed, or any slaughterhouse in use within the limits of any city, town, or borough (other than Melbourne) before October 1, 1863, and which has so continued ever since. By s. 13 no private abattoir is to be enlarged without the consent of the Board of Public Health. By s. 26 a register is to be kept at each abattoir of the animals slaughtered. By s. 30 no person is to sell meat unless it has been slaughtered at one of the appointed abattoirs and branded by the meat inspector as fit for human consumption, or if imported, until it has been certified by the Government inspectors. Penalties are provided for the due carrying into effect of these provisions, and the Board of Public Health have very large powers given them for the purpose of making rules and regulations under the Act, such as for the manner of killing and flaying the animals, for examining the animals before slaughter, for maintaining the cleanliness of the abattoirs, and for the preventing of persons with dangerous communicable diseases from handling the meat.

Third Victorian Contingent.—No. 1655 provides for the equipment, etc., of a third Victorian contingent for service in South Africa, and appropriates the sum of £30,000 for that purpose.

2. QUEENSLAND.

[*Contributed by* W. F. CRAIES, ESQ.]

Acts passed—16: Public, 15; Local and Personal and Private, 1.

Australasian Federation.—63 Vict., No. 1, provided for a referendum to the electors of the Colony of the draft Federal Constitution of the Commonwealth of Australia, and that the question submitted aye or no should be determined by a majority of the votes actually given. The operation of the Act was also made conditional on a majority in favour of Federation resulting from the referendum in New South Wales.[1]

Appropriations.—63 Vict., Nos. 1, 2, 4, 8, and 15 are Appropriation Acts.

The Criminal Code.—*Criminal Law.*—63 Vict., No. 9, is the most considerable Act of the Session. It enacts a Code of 707 sections, which will come into force on January 1, 1901 (s. 1). This Code is founded on a draft Code prepared by Sir Samuel Griffiths, Chief Justice of the Colony, which was submitted to the Colonial Legislature in the Session of 1898,[2] and referred to a commission of lawyers for examination and revision. The result of the labours of the commission has been to effect sundry not very important changes, and some mitigation of the extreme penalties for certain offences. But in the main the Code represents the work of the learned Chief Justice. In framing the Code it was necessary to consider—

(1) How far the Common and Statute Law of England in 1828 as to crimes was to be read as originally applying to the Colony;
(2) The effect thereon of the legislation of New South Wales and Queensland;
(3) How far the existing law could be merely codified, and where it required alteration, to avoid anomalies and ensure simplicity;
(4) How far the form or substance of the Code should follow precedents contained in the Codes of other countries.

The Criminal Law of Queensland prior to the Code consisted of—

(1) The Common Law and Statute Law of England as applied to New South Wales in 1828.[3]
(2) Imperial Statutes passed since 1828, and extending to the Colony—
  (*a*) Subject to change by local legislation;[4]
  (*b*) Irrespective of local legislation.[5]

[1] Regulations were made by the Governor in Council for conducting the referendum, which resulted in a vote in favour of Federation.

[2] See Journal, N.S., i., p. 478.

[3] By 9 Geo. IV., c. 83, s. 24. See *Att. Gen. for New South Wales* v. *Love* (1898), App. Cas. 679.

[4] *E.g.*, the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

[5] *E.g.*, the Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90).

(3) The Statute Law of New South Wales from 1828 to 1859,[1] during which period Queensland formed part of the old Colony.

(4) The Statute Law of Queensland since the separation.

Much of the legislation under heads 2 and 3 consists of transcripts or adaptations of Imperial Acts not applying *proprio vigore* to the Colony.

1. The following subjects have been omitted from the Code as manifestly obsolete or inapplicable to Australia:[2] The Statutes of Premunire, Statutes relating to divine worship, the Church of England or the Church of Rome, the law relating to blasphemy,[3] and forestalling and regrating.

2. The Code does not deal with the law embodied in Imperial Statutes which are in force in the whole of her Majesty's dominions, irrespective of local legislation.[4]

The Act resembles in form the Commonwealth of Australia Act, 1900, *i.e.*, it consists of a few general provisions, followed by a first schedule containing the Code and a second schedule containing specific repeals of prior legislation of the British, New South Wales, and Queensland Legislatures.

By s. 5 no one may be tried or punished in Queensland as for an indictable offence except under the *express* provisions of the Code or some other Statute Law of Queensland, or under the express provisions of some Statute of the United Kingdom which is expressly applied to Queensland or which is in force in all parts of her Majesty's dominions not expressly excepted from its operation, or which authorises the trial and punishment in Queensland of offenders who, at places not in Queensland, committed offences against the laws of the United Kingdom.[5]

By s. 6 acts declared by the Code to be lawful cannot be the subject of a civil action; but with this exception, civil rights of action are unaffected by the Code, and the omission in the Code of penal provisions as to acts or omissions previously actionable wrongs does not affect any right of action in respect thereof. S. 8 preserves the powers of Courts of Record to punish summarily for contempt of court. S. 9 makes the provision, now usual in Queensland, for the incorporation in the Government printers' copies of the Code of amendments made in future years.

The precedents utilised in framing the Code were the draft English

[1] See Art. 20 of the Order in Council of June 6, 1859. *Stat. R. and O. Revised*, vol. vi., p. 60.

[2] This omission does not, *per se*, determine whether the law in question is applicable to the Colonies; but certain of the statutes involved, *e.g.*, 9 Wm. III., c. 35, are expressly repealed; and s. 5 of the Act seems to exclude from Queensland all offences heretofore only punishable there under the Common Law.

[3] Abolished as to England by 7 & 8 Vict., c. 24. See Archbold, *Cr. Pleading* (22nd ed.), 1208.

[4] The only Imperial Statute since 1828 included in the repeals is the Piracy Act, 1837 (7 Wm. IV. and 1 Vict., c. 88).

[5] *E.g.*, the Pacific Islanders' Protection Acts and the Admiralty Offences (Colonial) Acts.

Codes of 1879 and 1880,[1] the Italian Penal Code of 1888, and the Penal Code of the State of New York. In the main it follows the lines of the English draft Code of 1880, but contains a good deal not to be found there.

For "treason" and "felony" is substituted the term "crime," and for offence punishable on summary conviction the term "simple offence," but the term "misdemeanour" is retained for indictable misdemeanours.

Perhaps the most novel or important sections in the Code itself are those (12–14) as to offences partly committed in the Colony procured or counselled by persons out of Queensland, or committed out of the Colony on the procurement of persons in the Colony. The draftsman seems to have succeeded in avoiding the constitutional difficulties created by the limited legislative authority of the Queensland Legislature[2] by making entry of the person concerned into Queensland after the offence a substantive offence under the law of Queensland (see s. 13).

Malice.—The perplexing terms "malice" and "maliciously" are deliberately omitted, and the words "wilfully" or "advisedly" (see 37 Geo. III., c. 70) are substituted. To make up for these omissions, "criminal intention and motive" are thus defined in s. 23:—

> Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident.
>
> Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.
>
> Unless otherwise expressly declared, the motive by which a person is induced to do or omit an act, or to form an intention, is immaterial so far as regards criminal responsibility.

This definition appears in substance to embody the Common Law as to *mens rea*, apart from the rules as to ignorance of law or mistake of fact. As to the latter, the general rule is thus stated (s. 24):—

> A person who does or omits to do an act under an honest and reasonable but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.[3] The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

[1] Adopted in New Zealand in 1893.

[2] See *McLeod* v. *Att.-Gen. for N.S.W.* (1891), App. Cas. 455; and *re* the Bigamy Laws of Canada (1897), 27 Canada 461.

[3] Cf. with this the Canadian decision in *Reg.* v. *Machekequonade*, 28 Ontario 309, approving the conviction for manslaughter of a pagan Indian who shot a man under the honest belief, shared by his tribe, that the deceased was an evil spirit with cannibal propensities.

S. 25, while perhaps an innovation, seems to turn into law what has certainly been a guide to juries in practice:—

> Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise[1] (see *Reg.* v. *Dudley* [1884], 14 Q.B.D 273).

The definition of insanity (s. 27) adds to elements deduced from *Macnaughton's* Case that suggested by Sir James Stephen (2 *Hist. Crim. Law*, 186), but not fully accepted in England:[2] "that of incapacity to control actions."

S. 53. provides for the punishment of persons defaming foreign sovereigns in the Colony, and sets at rest the doubts which have been felt as to the correctness of such a decision as *Reg.* v. *Peltier* (1803), 28 State Trials 529.

Chapter viii. deals with the offences of interference with the Executive or Legislature, which in England have been dealt with as breach of privilege, and chapter ix., s. 78, contains a provision which in form is new to English law, and seems to come from the Italian Code:—

> Any person who by violence or by threats or intimidation of any kind hinders or interferes with the free exercise of any *political* right by another person is guilty of a misdemeanour.[3]

Perjury.—Perjury, an offence which in various forms is to be found in about two hundred English Acts, is adequately defined and dealt with in three sections (123–125).

Compounding Felonies.—For the offence of compounding a felony is substituted the offence of compounding a crime, which is wider, because a number of offences—*e.g.*, perjury—which are misdemeanours in England are made crimes in Queensland. But it is not made an offence to compound offences which are misdemeanours by the law of Queensland.[4]

Offences Against Person.—In part v., dealing with offences against the person, a considerable change is made in the form of the law. S. 245 defines assault and battery as one offence under the name "assault," consisting in "applying force to another" under circumstances specified. The term "applies force" is made to include the application of heat, light, electrical force, gas, odour, or any other substance or thing whatever in such a degree as to cause injury or personal discomfort.[5] SS. 268 and 269

[1] Query, whether this would excuse cannibalism by shipwrecked sailors?

[2] See Archbold, *Cr. Pleading* (22nd ed.), p. 26.

[3] See *Ashby* v. *White*. The Trade Union Acts are not specifically directed against interference with "political" rights.

[4] See hereon Archbold, *Cr. Pleading* (22nd ed.), pp. 1035–1040.

[5] Cf. draft. Code 1880, s. 196.

contain a definition of what constitutes provocation of an assault, substantially the same as the Common Law defence of provocation to manslaughter.

Homicide.—Chapter xxviii. ("Homicide") diverges considerably from the English law. Unlawful homicide is divided into three categories: (i) wilful murder; (ii) murder; and (iii) manslaughter.

Manslaughter is unlawful killing under such circumstances as not to constitute wilful murder or murder (ss. 303 and 304). Wilful murder is unlawfully killing any person with intention to cause his death or that of another person, except in the cases stated in Art. 301. Murder is defined (s. 302) as unlawfully killing

under any of the following circumstances:—

(1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
(2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
(3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
(4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
(5) If death is caused by wilfully stopping the breath of any person for either of such purposes.

In the first case it is immaterial that the offender did not intend to hurt the particular person who is killed; in the second case it is immaterial that the offender did not intend to hurt any person; in the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Both wilful murder and murder are made punishable by death.

Defamation.—Chapter xxxv. on defamation makes slander indictable, and retains a form of *scandalum magnatum* by providing a special punishment for the defamation of Members of Parliament as such by persons not in Parliament (s. 381).

Larceny.—In chapter xxxvi. ("Larceny") the use of definitions of what can be stolen and of stealing has rendered it possible to make the chapter much shorter than the Larceny Act, 1861, and by a similar method the draftsman has much abbreviated the law as to forgery and malicious damage.

Preparation to Commit Offences.—In chapter lv. attempts are made punishable with half the penalty attached to the complete offence except where that is death or penal servitude for fourteen years or over, in which cases seven years' imprisonment is the maximum for the attempt. This avoids the difficulty recently found in California, under a similar enactment, in deciding what was the penalty incurred by a person who attempted to commit an offence punishable by penal servitude for life.

Conspiracy.—Chapter lvi. distinguishes, for purposes of punishment, conspiracy to commit crime ("felony") from conspiracy to commit offences of minor gravity; but s. 543 appears to accept in the fullest sense the present English law, by treating as criminal every conspiracy to effect any unlawful purpose, or to effect any lawful purpose by unlawful means.

Procedure.—Part viii., which deals with procedure, is in the main on the lines of English law, except that indictments are not submitted to a grand jury, but presented to the Court by a Crown Law Officer, and that the person indicted is entitled to a copy of the indictment.

In chapter lxiii. (s. 632) the uncorroborated testimony of an accomplice is made insufficient *in law*[1] for conviction, and in chapter lxvii. a person convicted is entitled, *as of right*, to have a case reserved on points of law taken on his behalf.

Fisheries.—63 Vict., No. 3,[2] amends the prior Acts relating to pearl shell and *bêche de mer* fisheries.[3] S. 2 provides for the qualification of owners, licensees, and lessees of ships and boats used in the fishery. The licence is not to be issued unless the licensing authority is satisfied by declaration under the Act. By s. 3 a penalty is provided for punishment of false declarations.[4] The Governor in Council is empowered to make regulations for the registration of owners, etc., of vessels engaged in the fishery and of agreements relating to such vessels, and for the due and effectual execution of the Act (ss. 5 and 6). S. 4 saves the rights of persons legally licensed in 1898. The persons who can hold licences are—

(1) Natural-born British subjects;
(2) Persons naturalised under the Imperial Statute, or a Colonial Statute or ordinance;
(3) Persons made denizens of Queensland by letters of denization;
(4) Bodies corporate consisting *wholly* of qualified persons established under and subject to the laws of some part of her Majesty's dominions.

Legitimation.—63 Vict., No. 12, abolishes as to the Colony the Common Law rule against legitimation *per subsequens matrimonium* and assimilates the Colonial law to that of Scotland, of most European states, and of many of the United States of North America.[5]

A man who claims to be the father of any illegimate child whose mother he has married since the child's birth may make a statutory declaration in the form provided by the Act, and on its production the Registrar must register the child, whether dead or alive, as the lawful issue of the marriage, and

[1] As to the English rule, see Archbold, *Cr. Pleading* (22nd ed.), pp. 360–361.

[2] Reserved for signification of her Majesty's pleasure, which was given on August 25, 1899.

[3] See 57 and 58 Vict., c. 60, ss. 1, 9, 71.

[4] Cf. 57 and 58 Vict., c. 60, ss. 67, 680.

[5] Dicey, *Conflict of Laws*, p. 498, n. 3.

if it is already registered as illegitimate, must also make a note on the previous entry of the new entry of legitimation (s. 7).

The effect of the registration is to give the child to which it relates, whether born before or after December 23, 1899, the status of a legitimate child from its birth, whether its parents married before or after the date above given, and to entitle the child so legitimated to all the rights of a child born in wedlock. The legitimation, as already stated, may take place after the child is dead, and in such event its issue acquire the same rights to represent their parent as if the parent had been born in wedlock. The legitimation does not affect rights accruing to others under dispositions made before, or by devolution of law from, persons dying before the passing of the Act (s. 5); and a child is not legitimated if at the time of its birth there existed a legal impediment to the marriage of the parents.[1]

The Act does not state expressly that the child must be born or the subsequent marriage take place or the parents be domiciled in Queensland;[2] but it is to be presumed that there was no intention to deal with cases where the parents or marriage were not *bonâ fide* domiciled in Queensland. If this be not so, difficulties and conflicts of law of a serious kind may arise.

Local Acts.—The only local Act relates to the lighting of the borough of Mount Morgan.

Local Works Loans.—63 Vict., No. 7, deals with a number of advances for local purposes. It is supplementary to the Local Loans Acts, 1880 and 1898,[3] and is made retrospective to July 1, 1899.

Marsupials.—63 Vict., No. 10, continues till January 1st, 1901, the Marsupial Boards Act, 1897.[4]

Public Loan.—63 Vict., No. 14, authorises the raising of a loan of £2,725,680 for the public service by debentures or inscribed stock bearing interest at a rate not exceeding three and a half per cent., and makes the loan a form of charge on the colonial revenues after existing loans of £34,217,514.

Public Service.—63 Vict., No. 12, assented to December 29th, 1889, continues in office the Public Service Board, created in 1896,[5] from December 16th, 1899, till November 1st, 1900.

Railways.—63 Vict., No. 13, assented to December 29th, 1899, continues the Railway Commissioners in office for ten months from December 21st, 1889.

Registration of Deeds.—63 Vict., No. 6 (after giving short titles to certain

[1] *I.e.*, an adulterine bastard cannot be legitimated. The law of Malta is different on this point (see *Gera* v. *Ciantar* [1887], 12 App. Cas. 557).

[2] See *Re Goodman's Trusts* (1881), 17 Ch. D. 266; *Andros* v. *Andros* (1883) 24 Ch. D. 637; Dicey, *Conflict of Laws*, pp. 101, 497.

[3] See Journal, N.S., i., p. 482.

[4] See Journal, N.S., i., p. 105.

[5] See Journal, O.S., ii., p. 174.

Acts of New South Wales, 7 Vict., No. 16, and 20 Vict., No. 27, which form part of the original law of Queensland), provides by s. 2 that—

> no instrument which at the date of the passing of this Act (November 3rd, 1899) requires or may hereafter require to be registered under the provisions of the Mercantile Act of 1867, the Bill of Sale Act of 1891, the Land Act of 1897, or the Mining Act of 1898, or any Act amending or in substitution of them shall require to be registered or shall be registered under the Registration of Deeds Act, and no such instrument enacted before November 3rd, 1899, and no instrument of any kind enacted before November 3rd, 1899, under the provisions of any Act now repealed relating to Crown lands or to goldfields, mines, or minerals respectively, shall be deemed to be invalid or shall in any way be prejudicially affected by non-registration under the Registration Acts.

Supreme Court.—63 Vict., No. 5, empowers the Registrar of the Central and Northern Courts to take certain business ordinarily reserved to the Judge in cases where the Judge is by reason of absence, illness, or other cause unable to take the business and no other judge is available.

The business in question is—

(1) Unopposed or *ex parte* proceedings in insolvency;
(2) Applications for *capias ad respondendum*;
(3) Applications under s. 17 of the Bills of Sale Act, 1891 (55 Vict., No. 23), for rectification of mistakes, etc., in the contents or filing of documents within that Act.

The Supreme Court may make regulations as to appeals from the Registrars (s. 3).

3. SOUTH AUSTRALIA.[1]

[*Contributed by* A. BUCHANAN, ESQ.]

Acts passed—General, 14; Private, 2.

Constitution Amendment.—The Constitution Amendment Act, 1899, No. 731, (1) disqualifies Members of either House of the Parliament of the Commonwealth of Australia for nomination or election as a Member of either House of the Parliament of South Australia, (2) vacates the seat of a Member of either House of the Parliament of South Australia in that Parliament upon taking his seat in the Parliament of the Commonwealth if elected a Member of either House thereof.

State Railways.—The Glenelg Railways Purchase Act, 1899, No. 726, ratifies an agreement for the purchase by the Government for £120,000 of the railways of the Glenelg Railway Company, Limited. By this purchase the only privately owned railway in the Colony is absorbed into the system of railways owned and worked by the Government.

[1] The Session 62 & 63 Vict. here reviewed commenced June 22nd, 1899, and ended December 21st, 1899.

Crime.—The Children Protection Act, 1899, No. 730, raises the age of consent, with some qualifications, from sixteen to seventeen years (s. 3); renders the neglect or ill-treatment of a child punishable by imprisonment or fine (s. 5), and provides machinery for bringing suspected cases of neglect or ill-treatment before the Court (ss. 5–7); makes it an offence for children under thirteen years of age to be in any public place selling, begging, or receiving alms (s. 8) during the prohibited hours of the night (s. 9); enables a Court or judge to determine in proceedings under the Act the age of a child on their own view, unless the contrary is proved (s. 11); empowers municipal corporations to regulate by bye-law the licensing of boys under thirteen for the sale on the streets of newspapers, flowers, etc., (s. 12); dispenses in cases of urgency with the need of the child being named in the information or warrant (s. 15); and empowers a special magistrate to amend any order, conviction, or warrant at any time after signature, but before execution thereof (s. 16).

Firms' Registration.—The Registration of Firms Act, 1899, No. 723, provides that (*a*) every firm-name which does not consist of the full or usual names of all the partners and (*b*) the name under which any person carries on business, if it contains or consists of any name or addition other than the full or usual name of such person, shall be registered (s. 4) by filing with the Registrar of Companies a statement of the (*a*) firm-name, (*b*) the nature of the business, (*c*) the place or places of the business, (*d*) the full names, usual residence, and other occupations (if any) of the persons carrying on the business (s. 5), verified by the declaration of all or one of the partners, or, if there is no partner in South Australia, by the declaration of the agent authorised to carry on the business (s. 8). Charges in the constitution of a firm are to be registered (s. 11), and also any change in the name of the firm (s. 12). Cumulative penalties are incurred by default of registration (s. 13), and actions by firms or persons in default may be stayed until registration is effected (s. 14). A false statement under the Act for the purpose of registration is a misdemeanour punishable by two years' imprisonment (s. 15). The Registrar of Companies is to keep a register and index of firms (s. 17). The public may search and take copies of, or obtain from the Registrar, certificates of registration and certified copies (s. 18), which latter are *primâ facie* evidence (s. 19). Regulations to prescribe fees, forms, and procedure may be made (s. 20).

Vine Protection.—The Phylloxera Act, 1899, No. 724, is designed for the protection of vineyards against the disease in grapevines known as *phylloxera vastatrix*, which has not hitherto obtained a footing in South Australia. The Act is to be administered by a Board of eight members, of whom two are to be appointed by the Government, and six are to be elected by the *vignerons* (s. 7) named on the rolls of the several districts declared by the Act (s. 9), who are to vote in one district only, but to have a cumulative vote according to the area of the vineyard in respect of

which they are named on the roll (s. 9). The *vignerons'* roll is to be compiled from returns to be sent in by the owners and occupiers of all vineyards exceeding one acre in extent, and is subject to annual revision (ss. 14, 15). The Board may declare an annual rate per acre, the maximum varying from threepence to one shilling, according to the age of the vines. Every wine-maker and distiller is also to pay an annual rate of sixpence per ton on grapes purchased (s. 19). The rates are to be collected by the Commissioner of Taxes in the same way as Land Tax (s. 23), and to form a fund to be called the "Phylloxera Fund" (s. 22), out of which the expenses of the administration of the Act are to be paid (s. 24). Inspectors are to be appointed by the Board (s. 27), with full powers of entry and search (s. 28). The Board have power to guarantee suspected areas, cause the destruction of vines therein, and take other precautionary measures (s. 30). Vineyards neglected for two years may be destroyed (s. 31) without compensation (s. 34). Compensation may be paid by the Board for other vineyards destroyed (s. 33), which, unless with the sanction of the Board, are not to be replanted with vines within ten years (s. 40). Vineyards of less than one acre and gardens containing vines are exempt from registration and taxation, but otherwise are subject to all the provisions of the Act (s. 46).

Life Assurance.—The Life Assurance Companies Act Amendment Act, 1899, No. 725, provides for the issue of special policies in lieu of lost policies voluntarily (s. 2), or compulsorily under a judge's order (s. 3) after publication of notice (s. 7), at the cost of the applicant (s. 8). The Act also provides for the transfer of policies from or to the South Australian register of any company, and such policies shall in South Australia be treated as governed by the law of that country to which the register on which they shall at the time be pertains (ss. 12, 13). Policies for the time being on the South Australian register of any company shall for the purposes of the Life Assurance Companies Act, 1882, be South Australian liabilities of such company (s. 15).

Mining on Private Property.—The Mining on Private Property Amendment Act, 1899, No. 728, extends the provisions as to compulsory mining leases for gold in part iii. of the principal Act to mining leases for copper, silver, and other metals also (s. 3).

Northern Territory Land.—The Northern Territory Land Act, 1899, No. 722, repeals part v. of the Northern Territory Crown Lands Act, 1890, No. 501, relating to pastoral leases, which it re-enacts in an amended form. It provides for the granting of leases of pastoral Crown lands (ss. 7-22) on specified terms and conditions (ss. 23-31); provides for the valuation of, and payment for, improvement on the leased lands, as between incoming lessees and the Crown and outgoing lessees (ss. 32-47), and the transfer of possession from outgoing to incoming lessees (ss. 48-52); regulates the exercise of the power of resumption by the Crown and payment of compensation

on resumption (ss. 53-58). Valuations are to be by arbitration (ss. 59-61). Lessees under former Acts may surrender and obtain leases under this Act (ss. 62, 63). Leases are not to be forfeited until after three months' notice to the lessee (s. 66), who may apply for relief to a Tenants' Relief Board (s. 67), constituted of a judge of the Supreme Court and two assessors, one appointed by each party (s. 65), which need not necessarily observe the rules of evidence (s. 76), before which, or upon which, counsel and solicitors are not permitted to appear or act (s. 75), and which has power to determine whether the forfeiture is to be enforced (s. 68) or if not, upon what terms the lessee is to have relief (s. 69). The Act provides for the issue of annual leases and commonage licences (ss. 77-80) and for the encouragement of meat preserving and boiling down and other modes of treating stock for export by the issue of leases of lands not exceeding a thousand acres rent free, on the expenditure of £2 per acre within two years in erecting suitable works on the land (s. 90).

Northern Territory Gold Mining.—The Gold Dredging Act, 1899, No. 720, applies only to the Northern Territory, and empowers the granting of leases of worked-out or poor auriferous lands for the purpose of dredging for gold (s. 3) for twenty-one years at a rental of sixpence per acre and a royalty of sixpence in the pound of the net annual profits (s. 4), the lessee after the first twelve months being bound to keep employed in dredging one man for every five acres, or in the alternative to keep continuously employed fully manned machinery to the value of at least £3,000 for every two thousand acres (s. 5), applications for leases to be considered in order of priority, and if simultaneous, the order of priority to be decided by lot (s. 6).

4. WESTERN AUSTRALIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—46.

Elementary Education (No. 3).—This Act deals with school fees, attendance at school, employment of children, census, etc. No fees are to be paid for children between six and fourteen; after that age there is a scale.

Parents of children between six and nine must send them to a school if one is within two miles; parents of children between nine and fourteen must send them if a school is within three miles. The only excuses for non-attendance are efficient instruction at home or unavoidable causes—sickness or danger of infection. Nobody is to take into his employment during school hours any child not exempt from school attendance. Children beyond the control of parents may be sent to an industrial school.

Company Dividends (No. 6).—Under this Act duties are charged on companies' dividends; and for the purpose of ascertaining the amount

payable, companies carrying on business in Western Australia are to make returns of dividends declared. In case of insurance companies the duty is to be charged on the premiums.

Evidence in Criminal Cases (No. 8).—The influence of English legislation may be seen in this Act. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. The qualifications engrafted are of the same kind as those of the English Act of 1898.

Evidence (No. 9).—This Act provides for the mode of proving Acts of Parliament and the public seals of any Australian Colony, Royal Proclamations, Orders of Privy Council, and incorporation of any company.

Bees (No. 10).—These insects are not exempt from contagious diseases. The present Act requires every beekeeper having a hive or swarm of bees so affected to forthwith report the same to the Department of Agriculture and take such steps for eradication of the disease as the Department may direct.

Weights and Measures (No. 11).—The regulation of weights and measures—a matter of prime importance in a country of such growing commercial prosperity as Western Australia—is provided for in this Act. Standard weights and measures are fixed, and inspectors are to be appointed by municipal councils. A penalty not exceeding £10 is imposed for using false weights and measures, and any bargain made therewith is annulled.

Dogs (No. 12).—A system of registering dogs was introduced into the Colony by the Dog Act, 1883. The present Act assigns the duty of registering to the officers of the road board. These officers are empowered to search premises for any unregistered dogs. A male adult aboriginal native may keep one dog—to be registered free of charge—provided it is kept free of mange or other contagious disease.

Customs (No. 13).—This Act deals with the licensing of customs agents by the Minister.

Payment of Wages in Goods (No. 15).—The spread of Truck Act legislation was noted in a recent number of the Journal. The present Act is an instance. By it, in every contract thereafter to be made with any workman the wages of such workman are to be made payable in money only, and contracts made in contravention of this Act, or stipulating as to the mode of a workman spending his wages, are to be void. "Contract" is given the widest interpretation. Employers are liable to penalties on a graduated scale—£10, £25, £50—for repeated breaches of the Act. Certain exceptions to the Act are stated.

Supply (Nos. 16, 17, 18, 39, and 44).—These are Supply Acts.

Constitution (No. 19).—This amends and consolidates the Constitution Acts. Among other things it fixes the qualification of electors. Every person

of the age of twenty-one being a natural-born or a naturalised subject of her Majesty who has resided in Western Australian for six months is entitled to be registered and vote, provided, *inter alia*, he has a freehold in possession in the province of the clear value of £100, or is a householder occupying a dwelling-house of the clear annual value of £25, or holds a licence from the Crown to depasture, occupy, cultivate, or mine upon Crown lands at a rental of not less than £10 per annum, etc. No aboriginal native of Australia, Asia, or Africa, or person of the half blood, is to be entitled to be registered except in respect of a freehold qualification.

The Legislative Assembly is to consist of fifty members and is to last three years. Judges, sheriffs, clergymen or ministers of religion, undischarged bankrupts, traitors, and felons are disqualified as members, also persons holding contracts for the public service.

Parliamentary Elections (No. 20).—This is a long Act in six parts: Administration (part i.), Electoral Registration (part ii.), Elections (part iii.), Offences and Penalties (part iv.), Disputed Returns (part v.), and Supplementary (part vi.).

Intoxicating Liquors (No. 21).—The *bonâ-fide* traveller here appears on the scene, and it is made enough if a publican, without proving a person served to have been a *bonâ-fide* traveller, satisfies the justices that he believed him to be so. Women are not to be employed at the bar more than fifty-four hours a week, exclusive of the time for meals, or after twelve o'clock on any night.

Dentists (No. 23).—Dentists were by the Dentists Act, 1894, required to register. This Act admits as one of the qualifications for registration that the applicant has for four years practised dentistry or dental surgery in some part of her Majesty's dominions or in the United States of America, holds a diploma from there, and has passed the prescribed examination. The burden is cast on a person accused of unlawful practice as a dentist of proving himself a registered practitioner.

Agriculture—Loans (No. 25).—An applicant for a loan under the Agricultural Bank Act, 1894, or by this Act is to make a statutory declaration that he is sole owner, and is bound as mortgagee to keep fences, fixtures, etc., in good and tenantable repair.

Pearls (No. 33).—Under this Act no other than a holder of a pearl-dealer's licence is to buy pearls at any place where the pearl fishery is carried on. A licence may be granted by the resident magistrate; the fee is £10 annually.

Mines—Sunday (No. 35).—Sunday labour in mines is the burden of this Act. No person is directly or indirectly to employ any workman for hire to do any skilled or unskilled labour, other than necessary labour specified in the exceptions, on a Sunday in or about a mine.

Poisons (No. 36).—This Act imposes conditions on the sale of arsenic or strychnine. The business of a pharmaceutical chemist is not to be carried on except by the chemist himself or a legally qualified medical practitioner.

The name of the chemist or his assistant must be conspicuously painted up on the front of the building.

Bank Holidays (No. 40).—Whit Monday is deleted as a Bank Holiday; but its place is more than supplied by six others.

Gold (No. 43).—There are other ways of obtaining gold than by ordinary mining. This Act is to encourage them, and for this purpose it provides that the Minister may grant gold-mining leases for twenty-one years of any Crown land for the purpose of sluicing and dredging for gold in any lakes, swamps, or marshes not suited to ordinary mining. Every such lease must contain certain covenants.

Bills of Sale, Liens, and Bailment (No. 45).—English experience in the matter of the bill of sale has evidently not been lost on the legislators of the Colony. The present Act is very carefully drafted. It avoids the dangerous rock of a statutory form, and in lieu of it requires every bill of sale to contain certain particulars, among them the true considerations for the bill, the sum secured, and the rate of interest. No distress for any rent due after registration of a bill of sale is to be available except for four weeks', three months', or six months' rent, according to the length of the tenancy.

There are separate provisions for bills of sale of stock, of crops, and of wool. Debenture also are to be registered in the same way as bills of sale. If there are a series, registration of one suffices.

Bank Notes (No. 46).—This imposes a £5 fine for defacing any bank note.

5. TASMANIA.

[*Contributed by* J. W. FEARNSIDES, ESQ.]

Acts passed—Public, 55; Private, 3.

Australasian Federation.—No. 1 is the Australasian Federation Enabling Act (Tasmania), and contains the amendments to the original Act of 1898 agreed upon at the Conference of Australasian Prime Ministers held in Melbourne in January and February, 1899.

Lotteries.—No. 2 renders illegal the use of totalisators except at races, where a licence to the stewards issued by the Commissioner of Police is required. No one in charge of any such machine is to receive money from any person under sixteen years.

Offences against the Person (No. 5).—Certain omissions in the Criminal Law of the Colony with respect to acts done with intent to murder and unnatural offences are hereby repaired.

Church of England in Tasmania.—No. 6 amends the Church of England Constitution Acts. It gives power to the Synod to alter the constitution of the Church in any way it thinks fit, so that it be not contrary to the doctrine of the Church, and to delegate powers to the Diocesan Council, and it creates the trustees a body corporate.

Elections.—No. 7 continues and amends the Electoral Act, 1896. It provides for the keeping of electoral rolls by the returning officer of each electoral district, and for revision of the same at least four times a year (quarterly) in each district before a Revision Court consisting of at least two justices of the peace resident within such district.

Tasmanian Contingent for South Africa.—No. 11 is concerned with the payment and maintenance of this force, and makes an appropriation therefor.

Bankruptcy (No. 12).—Certain slight alterations in the law of bankruptcy are made by this Act, among them provisions—analogous to those of the English Act, 1888—for preferential payment of the salary and wages of clerks, servants, and workmen up to a certain amount.

Appropriation.—Nos. 13, 29, and 48 deal with this.

Jury Act.—No. 32 is a lengthy consolidating and amending Act. The qualifications of jurors and exemptions are set forth (ss. 4, 5 and 7); superintendents of police charged with duty of preparing jury lists (ss. 10, 11); sheriff is to examine lists so prepared and make corrections (s. 11); justices of the peace to hold special sessions for finally making up the lists, which are then to be transmitted to the sheriff (s. 17). The judges of the Supreme Court select from this list the special jury list (s. 20).

Some ten sections are occupied with the formalities to be observed in summoning the jury, and it is interesting to note that provision has been made (s. 33) for the swearing of the jury at the opening of the Court, whereupon no further swearing upon any subsequent trial or enquiry is needed, unless the parties require it. All civil issues are triable by a jury of seven (s. 38), criminal by a jury of twelve (s. 39). Compensation and travelling allowances are provided for all jurors (ss. 61–64).

Firm Registration (No. 34).—This deals with certain firm names, viz.:—

(i) Where the business is not carried on under the full names of all the partners;

(ii) Where the name consists of any name or addition other than that of the person who carries on the business;

(iii) Where the name is used only for the purpose of carrying on the business, in which cases the firm name must be registered, together with the nature of the business carried on, and the names of all the persons who actually are engaged in carrying it on.

The registered name must always be used in matters connected with the business. On change of firm name, the new name must be registered as if it were a new firm. Penalties are prescribed for making default in registration, and any one knowingly making a false return is guilty of a misdemeanour.

Protection of Persons acting in the Execution of Statutory and other Public Duties.—No 36 enacts that no proceeding shall be instituted against any such person for neglect or default in the execution of his duty unless it be commenced within six months after such neglect or default.

6. NEW SOUTH WALES.[1]

[*Contributed by* A. R. BUTTERWORTH, ESQ.]

Acts passed—Public, 54; Private, 7; Bill Reserved, 1.

Introductory Observations.—Of the fifty-four public Acts of 1899, eighteen are consolidating Statutes which remove a large number of earlier enactments from the Statute Book.

The longest of these consolidating Statutes is the Companies Act, No. 40, which with its schedules covers over one hundred pages of print.

Another of the longest Acts of the year, also a consolidating Act, is the Common Law Procedure Act (No. 21) which with its schedules covers seventy-two pages. It is somewhat remarkable in that it re-enacts in New South Wales in 1899 the provisions relating to practice and the mode of pleading which prevailed in the Courts at Westminster at the end of 1854, while the neighbouring Colonies have for some years adopted the practice under the Judicature Acts. There is, no doubt, a strong opinion prevalent, which cannot be fairly said to be altogether groundless, that the long rambling statements permitted under the Judicature Acts are no improvement on the clear and concise pleadings under the Common Law Procedure Acts, while the increase in interlocutory proceedings has considerably added to the cost of litigation. But certain amendments in Common Law procedure have long been, and still are, urgently needed in New South Wales. There is, for instance, no summary means of obtaining judgment as under Order 14; a defendant can still enter an appearance in all cases without leave, and (except in action on bills of exchange and promissory notes) file a sham plea of "never indebted" for the sole purpose of gaining time. Again, payment into Court, together with a defence denying liability, is not allowed; there is no third party procedure, and counterclaims are unknown, while interpleader is still governed by the English Act of 1831 (1 & 2 Wm. IV., c. 58), unamended.[2]

Another Act which calls for special notice is the Factors Act (No. 28). It is called a consolidating Act, but it seems impossible to justify the title, since one of its sections merely declares that the Imperial Factors Acts of 1823 and 1825 are in force in the Colony. So far from this "consolidating Act," therefore, containing the law of the Colony, it is necessary, in order to ascertain this law, to turn to two singularly ill-drawn Imperial

[1] In 1899 there were three Sessions of Parliament. Act No. 1 alone was passed in the first Session; Acts Nos. 2 and 3 in the second Session; and the remainder in the third Session. They are all published in one volume.

[2] In 1887 Sir Julian (then Mr.) Salomons introduced in the Legislative Council a Bill the object of which was to adopt many of the main amendments in the law of procedure effected by and under the Judicature Acts without abolishing the old style of pleading, but the Bill was not passed.

Acts, repealed in England in 1889 by the Factors Act, which consolidated their provisions. It is difficult to see what good purpose is served by this kind of legislation.

Advances to Settlers (No. 1).—This Act, which received the Governor's assent on April 4th, 1899, after reciting that "many settlers are in necessitous circumstances and are financially embarrassed owing to the present and recent droughts, and it is expedient to make temporary advances to relieve such settlers," authorises the raising of a loan at three and a half per cent. by the Colonial Treasurer for the purpose of making temporary advances to such settlers, and provides for the making and repayment of such advances, and for purposes incidental to or consequent on those objects. A board of not more than three members is to be appointed to carry out the provisions of the Act (s. 13). No advance is to exceed £200, and interest is to be paid at four per cent., and the principal and all interest is to be repaid within ten years, and all advances are to be made subject to such conditions as the board may prescribe, and to certain conditions specified in the Act (s. 9 [2]). If any part of the principal or interest is unpaid for three months after the due date of payment, the Secretary for Lands may sell or otherwise dispose of the land, subject, however, to prior encumbrances (*ibid.*).

Australasian Federation Enabling (No. 2).—This Act, which received the Royal assent on April 22nd, 1899, provides for submitting to the electors of New South Wales the acceptance or rejection of the Draft Bill to constitute the Commonwealth of Australia.[1] The first schedule to the Act

[1] Similar Enabling Acts were passed in 1899:—in South Australia on March 8th, (61 & 62 Vict., No. 717), in Queensland on June 21st (63 Vict., No. 1), in Victoria on July 7th (63 Vict., No. 1603), and in Tasmania on July 11th (63 Vict., No. 1). Polls were taken under these Acts, and large majorities voted in favour of the Federal Constitution proposed. Western Australia stood aloof for some time, but in June, 1900, while the Constitution was being discussed in the British Parliament, that Colony passed a Federation Enabling Act, which enacted that this Constitution should be submitted to the electors and a poll be taken on July 31st, 1900. This poll resulted in a large majority in favour of the Constitution, and on August 21st motions were unanimously passed in both Houses of the Western Australian Parliament that a petition be presented praying her Majesty to declare by proclamation that Western Australia be admitted an Original State of the Commonwealth (cf. the Imperial Commonwealth of Australia Constitution Act, s. 3). The result of the polls (according to the *Western Mail*, a weekly newspaper published at Perth, Western Australia, of August 4th and 25th, 1900) was as follows:—

	FOR THE BILL.	AGAINST.	MAJORITY.
South Australia	65,990	17,053	48,937
New South Wales	107,274	82,701	24,573
Queensland	38,488	30,996	7,492
Victoria	151,352	9,656	141,696
Tasmania	12,931	779	12,152
Western Australia	44,704	19,691	25,013
Totals	420,739	160,876	259,863

gives the form of ballot paper to be used, enabling each elector to answer "Yes" or "No" to the question, "Are you in favour of the proposed Federal Constitution Bill, as amended?" The Bill as drafted by the Federal Convention of 1897-98 had been amended at a conference of Prime Ministers at Melbourne in January and February, 1899, and the amendments so made are set out in the second schedule, while the third schedule to the Act contains the Draft Bill as so amended.[1]

Conciliation and Arbitration (No. 3).—This Act, which has for its object to make provision for the prevention and settlement of trade disputes, confers on the Minister charged with the administration of the Act powers of directing enquiries, appointing conciliators and arbitrators, and otherwise promoting a settlement of differences, similar to the powers conferred on the Board of Trade by the Imperial Conciliation Act, 1896.

Prevention of Cruelty to Animals (No. 11).—This Act[2] amends the principal Act of 1850 (14 Vict., No. 40). The word "animal" in this and the principal Act is made to include "any species of quadruped, and every species of bird, whether in a natural or domestic state" (s. 1). The carrying of an animal, whether upon a vehicle or not, so as to cause unnecessary suffering is made an offence, as is also knowingly and cruelly ill-treating any animal by overloading or overcrowding.

Military Contingent (No. 12).—This Act makes provision for the government and discipline of the Contingent consisting of officers and men of the military forces from time to time raised and despatched by the Government of New South Wales for service with her Majesty's Regular Forces in South Africa. It enacts that the Contingent shall be subject to the Military and Naval Forces Regulation Act—a Colonial Statute of 1871—and in so far as the said Act and regulations thereunder do not provide for the effective government and discipline of the Contingent, to the Imperial Army Act, the Queen's Rules and Regulations, and the Articles of War, etc.

Small Debts Recovery (No 13).—This Act consists of sixty-eight sections and schedules, and repeals the whole or parts of seven prior Acts relating to the recovery of small debts in Courts of Petty Sessions, and consolidating their provisions.

Matrimonial Causes (No. 14).—This is an Act of ninety-five sections, repealing the whole or parts of eight earlier Acts, and consolidating their provisions. It re-enacts the provisions introduced by the Act of 1881 making adultery by a husband domiciled in the Colony a sufficient ground for

[1] This Bill is, of course, identical with that contained in the second schedule to the Victorian Act, which is printed in this volume, *ante*, pp. 151–172. The Bill, with the few amendments specified in a note, *ante*, pp. 249–250, has now become an Imperial Statute (the Commonwealth of Australia Constitution Act, 63 & 64 Vict., c. 12), which received the Royal assent on July 9th, 1900.

[2] The provisions of this Act may be usefully compared with those of the recent Imperial Statute (the Wild Animals in Captivity Protection Act, 1900, 63 & 64 Vict., c. 33).

dissolution of marriage (ss. 15, 19), as well as the provisions contained in the Acts of 1892 whereby, on the petition of either husband or wife who has been domiciled in the Colony for three years and upwards, wilful desertion without just cause for three years and upwards, or habitual drunkenness and neglect for such period, or being sentenced for a long term of penal servitude or imprisonment, or having repeatedly assaulted and cruelly beaten the petitioner, is made a valid ground for dissolution of marriage (ss. 13, 16, 20).

Marriage (No. 15).—This Act repeals three prior Acts, and consolidates the law relating to marriage.

Printing (No. 16).—This Act repeals two earlier Acts of 1827 and 1852 and consolidates their provisions for preventing the printing and publishing of books and papers by persons not known. Every possessor of a printing press or types for printing is still compelled to give signed notice thereof to an officer of the Supreme Court, and if he fails to do so, or uses such press or types in any place other than that expressed in his notice, he becomes liable to a penalty of £20 (s. 2).

Landlord and Tenant (No. 18).—This is a consolidating Statute relating to the law of landlord and tenant which repeals the Leases Facilitation Act of 1847, the Distress for Rent Acts of 1851 and 1898, the Tenements Recovery Act of 1853, and certain other enactments.

Patents (No. 19).—This Act repeals and consolidates the provisions of four earlier Acts relating to letters patent.

Police Regulation (No. 20).—This Act consolidates the Statute Law relating to the regulation of the police force.

Common Law Procedure (No. 21).—This is a long Act of 270 sections, with schedules, consolidating the enactments—most of which were passed between the years 1840 and 1861—relating to the process, practice, and mode of pleading at law in the Supreme Court. These enactments include the provisions of the New South Wales Common Law Procedure Acts of 1853 and 1857, which adopted the main provisions of the English Common Law Procedure Acts of 1852 and 1854 respectively. The practice and mode of pleading, thus consolidated and re-enacted, correspond to the practice and pleading prevailing in the Courts at Westminster at the end of 1854.[1]

Adulteration of Liquors (No. 22).—This Act consolidates two prior Acts relating to the adulteration of malt liquors and of spirituous or fermented liquors.

Book Purchasers' Protection (No 25).—This Act repeals and re-enacts an Act of 1890 which had for its object to protect the purchasers of certain books and other publications, and to amend the law of contracts relating thereto. The Act applies to every contract for the sale of any book, engraving, lithograph, picture, or other like matter, where the article is not to be delivered to the purchaser complete at the date of the contract

[1] As to this Act, see, further, the Introductory Observations, *supra*, p. 570.

(ss. 3, 4); and every such contract is void unless signed by the purchaser on a prescribed form clearly stating his total liability (s. 5), a duplicate of which form is to be given to him (s. 6).

Felons' Apprehension (No. 26), **and Prisons** (No. 27).—These are consolidating Statutes relating to those matters respectively.

Factors (No. 28).—This Act is intituled "An Act to Consolidate the Enactments Relating to Advances made to Agents Intrusted with Goods," but its clauses fail to justify this title. What it, in fact, does, is to consolidate the provisions of the earlier Act, 30 Vict., No. 13, which was a transcript of the Imperial Factors Act of 1842, and to declare that the Imperial Factors Acts of 1823 and 1825 are in force in the Colony (s. 3). The amendments in the law introduced by the Imperial Factors Act of 1877 have not been adopted, nor has any use been made of the Imperial Factors Act, 1889, which consolidated and repealed the earlier Acts.[1]

Banks and Bank Holidays (No. 30).—This Act amends the principal Act of 1898 in the following respect—*viz.*, when January 26th, the Queen's Birthday, August 1st, or the Prince of Wales's Birthday falls on any day of the week other than Monday, the following Monday shall be a Bank Holiday in lieu of the day itself.

Friendly Societies (No. 31).—This Act amends the law relating to these societies, and partially repeals the Act of 1873.

Navigation (No. 32).—This Act was reserved on December 8th, 1899, for her Majesty's assent, which was notified on March 17th, 1900.[2] It abolishes the Marine Board which was incorporated under the Act of 1871, and constitutes a Department of Navigation and Courts of Marine Inquiry, and amends the Navigation Acts of 1871 to 1896 in other respects.

Early Closing (No. 38).[3]—Shops in the metropolitan and Newcastle districts are to be closed daily at 6 p.m., except that if open on Wednesday till 6, they may be open on Friday till 10 p.m. and on Saturday not later than 1 p.m.; or if closed on Wednesday at 1 p.m., they may be open on Saturday till 10 p.m. (s. 1). Country shops are to be closed on four days in the week at 6 p.m., on one day at 1 p.m., and on another day at 10 p.m. (s. 3). Exceptions are made in the case of shops of a certain kind: hairdressers' shops can be open till 7.30 p.m. (s. 5); public-houses, tobacconists', fruit shops, etc., are to close at 11 p.m. and restaurants at midnight (s. 6). Every person employed by a butcher or milk-vendor in delivering meat or milk is to have a half-holiday on one week-day in each week, and every baker's man delivering bread is to have a holiday on one week-day in each month (s. 10). Any person infringing the Act

[1] See also the Introductory Observations, *supra*, p. 570.

[2] N.S.W. *Government Gazette*, No. 265, March 27th, 1900.

[3] Cf. the Early Closing Act of West Australia, 1898, No. 36, a summary of which is given in this Journal, I., 1899, p. 493.

is liable to a penalty of £2 for a first offence, and from £2 to £10 for a subsequent offence (s. 15).

Infants' Custody and Settlements (No. 39).—This Act consolidates the law relating to: Part I., the custody of infants; Part II., infants' marriage settlements; and Part III., the settlement of damages recovered on behalf of children.

Companies (No. 40).—This is a long Act of 284 sections and eight schedules, consolidating the provisions of nine earlier Statutes which it repeals. Besides re-enacting provisions identical for the most part with those of the Imperial Companies Acts, it re-enacts the main provisions of the New South Wales Reconstructed Companies Act, 1894, and also those of the No-liability Mining Companies Act, 1896.[1]

Gold and Mineral Dredging (No. 44).—This is an Act to regulate mining for gold and other minerals by dredging, pumping, sluicing, or other method in the beds of rivers and lakes, or under tidal or standing waters, or under the ocean contiguous to the coast-line. The Governor is empowered to grant leases of Crown land for such purposes in areas not exceeding ten acres for every man to be employed, and one acre in addition for every £50 to be expended; but the labour shall not be less than in the proportion of seven men to one hundred acres, and the maximum area demised shall not exceed one hundred acres (s. 3). Two or more leases, however, may be amalgamated for more efficient working by leave of the Minister. Such leases shall not be for a longer term than fifteen years, renewable on payment of a fine (*ibid*).

Probate Duties Amendment (No. 45).—This Act imposes certain probate and other duties and increases the amount of death duties payable under the Stamp Duties Act, 1898.[2] Thus the duty is raised where the value of the estate is between £1000 and £5000 from one to two per cent., and where it exceeds £100,000 the duty is raised from five to ten per cent. The share of the widow or the children of the deceased is to be calculated, however, at only one-half of this percentage.

Crown Lands Amendment (No. 51).—This Act makes numerous alterations in the law relating to the sale, leasing, disposal, and management of Crown lands.

Tonnage Rates (No. 52).—This Act makes certain amendments in the earlier Acts of 1880 and 1882 relating to wharfage and tonnage rates.

Companies (Death Duties) (No. 53).—This Act provides for the registration of the offices of companies incorporated according to the laws of some country other than New South Wales which carry on there the business (*a*) of mining for minerals, or (*b*) of pastoral or agricultural production, or of timber-getting; and imposes duties payable by the

[1] As to this Act, see Vol. II. of this Journal for 1897, p. 160, and note [1], *ibid.*

[2] As to this Act and the amount of death duties payable under it, see this Journal for 1899, p. 504.

companies on the death of shareholders, wherever domiciled, of such companies. The duties payable are at the same rate as those payable under the Probate Duties Act (No. 45),[1] and if paid under that Act are not payable under this Act in respect of the same shares or stock (s. 7).

Library and Art Gallery (No. 54).—This Act places the control and management of the Public Library (Part I.) and of the National Art Gallery (Part II.) each in the hands of a separate body of trustees incorporated by the Act, and each body of trustees is endowed with an annual sum of £2000 out of the Consolidated Revenue, exclusive of rent and salaries. Donations or bequests to these institutions are exempted from the death duties (s. 32).

7. NEW ZEALAND.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—33.

Supply (Nos. 1, 2, 4, 7 and 32).—These are Supply Acts.

Municipal Franchise (No. 3).—This Act makes provision for the amendment each year by the council of the burgess list.

Public Works (No. 5).—This Act authorises the raising of £1,000,000 by debentures, scrip, or inscribed stock charged on the public revenue of the Colony. The works and purposes to which this sum is to be applied are—

(1) The construction of various railways;
(2) Land settlement and gold-fields development;
(3) Public and technical school buildings;
(4) Purchase of native lands;
(5) Contingent harbour defence.

Land Settlement (No. 6).—This is a contribution to the difficult subject of the housing of the working classes in urban districts. For the purposes of providing workmen's houses or workmen's villages, land may, under the Act, be compulsorily taken within a borough having a population of not less than fifteen thousand inhabitants according to the latest census returns, or within a radius of fifteen miles from the boundary thereof.

Not more than one hundred acres is to be taken in one year, and the owner is to have the right to retain an area of not more than ten acres, if such area is within such borough, or fifty acres in any other case.

No land is to be taken compulsorily for such workmen's houses until after tenders have been called for land suitable for the purpose, nor until, in the opinion of the Land Purchase Board, all other means of obtaining suitable land have been exhausted.

[1] See *supra*, p. 575.

Intoxicating Liquors (No. 8).—The sale of alcoholic liquors in the Colony is controlled—under the Act of 1895—by local option, the vote of the electors of the district determining what number of licences shall be allowed.

The object of the present Act is to secure that the polls shall be properly conducted. For this purpose the Act provides that any ten electors who are in favour of the proposal that no licences be granted in the district may nominate any two specified persons to appoint one scrutineer to act at each ballot-box in the district, in the interest of all electors who are in favour of that proposal. Any ten electors who are against the proposal may do the same. The Returning Officer is then to select two fit persons on each side to appoint a scrutineer to act at each ballot-box in the respective interests.

Native Townships (No. 9).—By this Act provision is made, in lieu of deducting the compensation and costs of survey under the Native Townships Act, 1895, in a lump sum, to make such deduction by half-yearly instalments not exceeding twenty in number.

Police Provident Fund (No. 10).—This Act embodies a provident scheme for the police force of the Colony. A fund is created from, *inter alia*, moneys paid into the Police Reward Fund, and the contributions of members of the force deducted from their pay according to a graduated scale, the percentage for a member under thirty years of age being five per cent., under forty six and a half, and so on. The fund is administered by a Board for the benefit of members of the force retiring as medically unfit or on account of age. If a member dies from injuries received in the execution of his duty, an allowance may be made to the widow and children (£18 a year to the widow and 5*s.* a week for each child till fourteen). Life allowances may be forfeited if the recipient is convicted of a crime or becomes the associate of thieves or persons of bad repute. Members who have already insured their lives according to departmental rules may elect to be exempted from the Act.

Factories—Payment of Boys and Girls (No. 11).—This Act furnishes a fresh illustration of the solicitude of modern law to protect children. The object in the present case is to secure that boys and girls employed in factories shall be paid for their work, and to prevent an illusory payment the Act fixes a minimum wage of 5*s.* per week for boys, and 4*s.* for girls, payable weekly, or at agreed intervals not longer than a fortnight. An employer making default for fourteen days in full and punctual payment is liable to a penalty for every day the default continues. The penalty may be recovered by an inspector of factories. To prevent the policy of the Act being defeated by a premium being exacted, the Act provides that no premium is to be paid by any boy or girl for employment in a factory or accepted by any factory.

Wages Protection (No. 12).—A practice appears to have grown up in

the Colony of employers taking out accident insurance policies to insure their workmen against accident and themselves against liability, and compelling their workmen to contribute as premium for such insurance sums at a rate proportionate to their wages. This Act is designed to defeat this practice, and makes it unlawful for any employer to directly or indirectly take or receive any money from any worker in his employ, whether by way of deduction from wages or otherwise howsoever, in respect of any policy of insurance against injury by accident. Insurance companies are similarly prohibited from taking from a worker money in respect of a policy to indemnify the employer. Money so taken from any worker is to be recoverable from the employer or company, with full costs of suit; and the consent of the worker is no defence.

Local Government—Voting (No. 13).—Under this Act, where provision is made for submitting any proposal to the votes of the ratepayers or burgesses of the district of a local authority, the proposal is to be deemed to be carried if at a poll a simple majority of votes is recorded in favour of it. A proposal for a loan is excepted. In that case three-fifths of the total number of votes recorded are required to carry the proposal.

Jurors—Payment (No. 14).—Jurors under the Juries Act, 1880, of the Colony are already entitled to be paid in civil cases—special jurors, 20*s.* for the first day, 10*s.* for subsequent days; common jurors, 10*s.* By this Act every juror who attends at any sittings of the Supreme Court or the District Court at which criminal cases are tried is entitled to be paid the sum of 8*s.* a day if he attends for more than four hours in the day; if for less, 4*s.* Jurors on inquests are to be entitled to the same. The money is to be paid from the Consolidated Fund.

Shipping (No. 15).—This Act makes special provisions for ships propelled by gas, oil, fluid, electricity, or other mechanical power than steam. They must have the prescribed number of engineers certificated as competent to take charge of engines so driven, and the Minister is empowered to make regulations, among other things, for the examination of candidates for such certificates.

Settlers—Government Advances (No. 16).—In order to encourage punctual payment by settlers who have received Government advances of instalments of principal and interest, this Act allows on payment of such instalment within fourteen days after it is due a rebate reducing the interest from five to four and a half per cent. Loans may also be readjusted when part repaid. Advances may be made on urban and suburban lands, subject to special provisions.

Kauri Gum (No. 18).—This amends the Kauri Gum Industry Act, 1898. No one is entitled to dig on any Kauri gum reserve unless he is the holder of a special licence under the Act, and is a British subject by birth or naturalisation or a native of the Maori race.

Pacific Telegraph Cable (No 19).—This Act authorises the Governor

in Council to give effect to certain resolutions as to the construction of a Pacific telegraph cable, subject to conditions.

Government Accident Insurance (No. 20).—Under the Life Insurance Acts of the Colony the Government carries on the business of life insurance. The present Act authorises the Government to undertake accident insurance business as a branch of its insurance business, and formulates a scheme for raising funds for the purpose.

Native Reserves (No. 21).—This amends the Native Reserves Act Amendment Act, 1895, in reference to leases under the Act.

Drugs (No. 22).—The Pharmacy Act, 1898, entitles certain persons to be registered as pharmaceutical chemists without examination. This Act provides that the exemption is only to apply to a person who was at the date of the Act, as owner or manager, keeping open a shop in New Zealand as a dispensing or homœopathic chemist.

Borough Franchise (No. 23).—This amends the law relating to the borough franchise in certain particulars.

Trustees (No. 24).—This Act enables a trustee of real or personal property in New Zealand who is residing out of the Colony or leaving it to delegate his powers to any person residing in New Zealand, and provides for the retirement of trustees and the appointment of new trustees.

Government Life Insurance (No. 25).—This Act enlarges and defines the powers of a Deputy Commissioner under the Government Life Insurance Act, 1888.

Government Loans to Local Bodies (No. 26).—In lieu of interest at five per cent. for a Government loan to a local body for a term of twenty-six years, this Act reduces the rate to four and a half per cent. and gives an option of a loan for thirty-two years at four per cent., or for forty-one years at three and a half per cent. It also makes provision for the readjustment of existing loans.

Railway Construction (No. 27).—This Act provides for the construction of a series of railways in the Colony.

Revenue (No. 28).—This Act imposes a land-tax and income-tax.

Mining (No. 29).—This is a long Act regulating a variety of matters in connection with mining, antedated miners' rights, applications for claims, business site licences, water-races, certificates of easement, surrenders for exchange of title, timber-cutting rights, tribute agreements, protection of bridges and railways, public roads, and other miscellaneous matters.

Native Land (No. 30).—This Act enables a native owner of land to mortgage it as effectually as a European. Native land is not, after the commencement of the Act, to be alienated to the Crown by way of sale.

Counties (No. 31).—This Act deals with the boundaries of counties.

Immigration—"The Prohibited Immigrant" (No. 33).—The growing jealousy on the part of the Colonies of indiscriminate alien immigration

is illustrated in the present Act. It prohibits from landing in New Zealand any person—

(1) Other than of British (including Irish) birth and parentage who fails to write out in any European language a statutory form of application, or

(2) Who is an idiot or insane, or

(3) Suffering from a contagious disease which is loathsome or dangerous, or

(4) Has within the previous two years been convicted in any country of any offence involving moral turpitude which, if committed in New Zealand, would be punishable by imprisonment for two years or upwards, not being a mere political offence. Shipwrecked persons are exempted, as are persons with a certificate signed by the Colonial Secretary, her Majesty's land and sea forces, etc.

A person appearing to be a prohibited immigrant, but not coming without the above sub-sections (2), (3), (4), may land on depositing £100 as security, which is forfeitable to her Majesty if he proves to be a prohibited immigrant. The master and owner of a vessel landing a prohibited immigrant are also jointly and severally liable to a penalty of £100 for each such immigrant, and also to the expense of his removal. Vessels may be detained until all penalties have been satisfied.

8. BRITISH NEW GUINEA.

[*Contributed by* W. F. CRAIES, ESQ.]

Ordinances passed—5.

Appropriation.—No. 1, 2, and 3 are Appropriation Ordinances.

Lands.—No. 4 regulates the dealing with lands in the possession. It is to a large extent a Consolidation Ordinance, and repeals prior Ordinances on the same subject, with sundry savings (s. 3).

Part ii. prohibits all dealings with natives for the purchase of land, or any right therein or to the usufruct thereof (ss. 4–6), except by the Administrator, who may purchase in the public interest from natives lands which they do not require (ss. 7, 8).

Part iii. provides for acquiring and recording the acquisition of Crown lands and of leases *to* the Crown, and for registration of the instrument of title under the Real Property Ordinance of 1889 (s. 9); and it also deals with repurchase by the Crown of land as to which Crown grants have issued, and authorises the Crown to take possession of waste or vacant lands never alienated by the Crown, and not used or likely to be used by native-born Papuans.

Part iv. deals with settlements on Crown or waste land. It prohibits settlement without legal right

(1) By any but native-born Papuans on native lands;

(2) By any person on Crown land, or land held by the Crown under lease, or upon vacant land.

Part v. deals with the alienation of Crown lands in fee simple, which may be effected by the Administrator in Council by grant to natural-born or naturalised British subjects (s. 15). Grants may be made to missions for religious purposes (s. 17), but not by way of reward for exploration (s. 16), nor till after proper survey, except where a whole island is granted (s. 19). Power is given to sell Crown lands by public auction or private treaty—

(1) For building allotments (s. 25);

(2) In blocks not exceeding 640 acres (s. 31); and

(3) To settlers in blocks not exceeding 5,000 acres (s. 32).

Provisional grants may be issued where land is sold on condition of its improvement, or where a title in fee simple cannot be given for want of survey or other cause (ss. 33, 34).

Part vi. deals with leases and provisional leases of Crown lands or land in which the Crown has a leasehold interest. Special regulations are made as to leases for—

(*a*) Agriculture;

(*b*) Pasture;

(*c*) Trade or fishing;

(*d*) Cocoanut plantations.

All grants and leases, absolute or provisional, are to be read as conveying a reservation of all mines and minerals, and of rights of access for their working (s. 47).

Mines.—No. 5. repeals the gold-mining laws previously in force in the possession, and adopts as the law of the possession the Mining Act of 1898 of Queensland,[1] with certain modifications. The law is applied, not only to gold, but to platinum and any metal belonging to the platinum group of metals, and to the metals themselves and any earth containing them, or having any of them mixed in the substance thereof, or set apart for the purpose of extracting such metals (s. 3). The fee for miners' rights is 10*s.* (s. 4). The Central Court of the possession is substituted for the Supreme and District Courts of Queensland (s. 5).

[1] 63 Vict., No. 24, Journal, N.S. i., p. 481.

9. FIJI.

[*Contributed by* W. F. CRAIES, ESQ.]

Ordinances passed—9.

Appropriation.—Nos. 1 and 8 are Appropriation Ordinances.

Gambling.—No. 2. repeals Ordinance 9 of 1897,[1] and makes fresh provision for the suppression of gaming carried on—

(1) On any path, street, road, or place to which the public have access, whether as of right or not;

(2) In common gaming-places—*i.e.*, "any place kept or used for betting, or for the playing of games for stakes, to which the public have access with or without payment, even if it is so used on one occasion only."

"Place" is defined as including "any house, office, room, *or building*, and any *place or spot, whether open or enclosed, and any ship, boat, or other vessel, whether afloat or not, and any vehicle.*"[2]

The rest of the Ordinance is in substance a transcript of the Imperial Betting Act, 1853 (16-17 Vict, c. 119); but the above definition seems to have been introduced so as to oust the construction put on the latter Act in *Powell* v. *Kempton Park Racecourse Co.* (1899), App. Cas. 143.

The following are excepted from the Ordinance:—

(1) Use of a totalisator[3] in connection with race meetings or athletic sports;

(2) Playing, whether for a stake or not, at billiards or bagatelle; playing a game in any duly licensed hotel if the gambling be not promiscuous; and playing games which are also athletic exercises.

Lepers.—No. 7 deals with persons the subject of any form of leprosy (*lepra vera*). Under ss. 3 and 4 the Governor in Council may, by gazetted notification, prohibit lepers from carrying on certain trades and callings.

SS. 5–10 provide for the establishment of leper asylums, and the sending to them of vagrant lepers and lepers who are in a prison or a lunatic asylum.

SS. 11, 12 prohibit the landing from places outside the Colony of lepers who are not natives of Fiji, and enforce the arrest and detention in a leper asylum of such lepers if they land.

SS. 16, 17 create machinery for the visiting and regulation of the asylums.

Lepers received in asylums are in custody there until discharged by order of the Governor; and while they are there, no one may buy or receive from them any food, clothes, or other articles. To justify dealing with any one as a leper under the Act it is necessary to have the evidence

[1] Journal, N.S., i., p. 122.

[2] Cf. Lottery Act, 1823 (4 Geo. IV., c. 60), s. 60.

[3] This contrivance is legalised, subject to certain conditions, throughout the Australasian Colonies.

of a duly qualified medical practitioner that the person dealt with is a leper (ss. 15–18).

Matrimonial Causes.—No. 4 applies to the Colony, *mutatis mutandis*, the Matrimonial Causes Act, 1884 (47 & 48 Vict., c. 68).

Marine Board.—No. 5 repeals prior Ordinances[1] on this subject, and provides for the appointment and functions of a Marine Board for Fiji and Rotuma. The Board conducts examinations and grants certificates of competency for masters, mates, and engineers of foreign-going and interinsular vessels (part iii.) and has power to hold preliminary enquiries and formal investigations into wrecks and casualties, and to cancel or suspend certificates for wrongful acts or defaults. The Board of Trade may order a re-hearing of any investigation or enquiry, and an appeal lies to the High Court in England in certain cases where an application for re-hearing is not made or is refused (s. 43). The Board also grants certificates and licences for trading and passenger vessels, and has power for regulating interinsular trade, the requirements of vessels, lights and signals, and to direct survey of vessels reported as unseaworthy.

Pearl Fisheries.—No. 3 forbids the taking, removal, sale, or export of immature pearl-oyster shell—*i.e.*, of the black-edged or golden-edged varieties of *Meleagrina Magaritifera*—in which the *nacre* or mother-of-pearl measures less than four inches from the butt or hinge to the opposite edge or tip of the shell. The penalty is £5 per shell (s. 1). All pearl oyster is made subject to inspection before exportation, and power is given to open packages and search ships.

The Governor in Council may by proclamation alter the size of shell which may be lawfully taken in any waters of the Colony if satisfied that the full-grown shell in these waters does not attain the statutory minimum, and he is also empowered to establish a close season for fishing for pearl shell.

Supreme Court.—No. 9 amends s. 10 of the Supreme Court Ordinance of 1875 (No. 14) with respect to the duties of the Sheriff of the Colony.

Appeals from Inferior Courts.—The Appeals Ordinance, 1899 (No. 6), amends and consolidates the laws relating to appeals from summary convictions and orders of inferior Courts.

An appeal lies from a summary conviction or summary order, where the amount of the penalty or order exceeds £3, or where imprisonment is ordered without the option of the fine. Where the defendant is not represented by solicitor or counsel, the magistrate must inform him of the right to appeal, and explain to him the procedure for appealing and the security to be given (ss. 4, 5).

Notice of appeal must be given in writing to the magistrate and the respondent within forty-eight hours of conviction or order, and security must be given for due prosecution of the appeal of—

(1) Half the penalty, if any;

[1] No. 3 of 1888, No. 10 of 1889, and No. 11 of 1892.

(2) If none, a sum not exceeding £50;

(3) A sum not exceeding £10 for costs.

The appellant may either deposit the amount or give satisfactory security.

The appeal is by petition to the Supreme Court, and is heard on the evidence taken before the inferior Court, of which the appellant is entitled to a copy. There is power to give leave to file fresh evidence (ss. 11–19).

In all cases in which an appeal lies under the Ordinance, either party may require the magistrate to state a case to review his determination on any point of law involved in the proceedings. Security is to be given not exceeding that which would be required on an appeal, and the procedure is in substance the same as under the Imperial Summary Jurisdiction Acts.[1]

10. WESTERN PACIFIC.

[*Contributed by* W. F. CRAIES, ESQ.]

Changes in the British jurisdiction in the Western Pacific have been effected by the Anglo-German Convention and Declaration of November 14th, 1899.[2] By that Convention Great Britain renounced (1) in favour of Germany all her rights over Upolu and Savaii in the Samoan Islands, including the rights to establish a naval and coaling station there, and of exterritoriality therein; (2) in favour of the United States all her rights over Tutuila and the other islands of the Samoan group east of longitude 171° east of Greenwich in the same group; and Germany renounced in favour of Great Britain—

(1) All her rights over Tutuila and other islands of the Samoan group west of longitude 171° east of Greenwich;

(2) All her rights over the Tonga Islands (including Vavau) and over Savage Island, including the right to establish naval and coaling stations, and to exterritoriality in the said islands; and

(3) Recognised as falling to Great Britain those of the Solomon Islands[3] till then belonging to Germany, which lie east and south-east of Bougainville Island and Buka, which latter are retained by Germany.

No Queen's regulations[4] were made for this jurisdiction during 1899, nor was any Order in Council made with reference to the jurisdiction acquired under the Convention.

[1] 20 & 21 Vict., No. 43; 42 & 43 Vict., No. 49, s. 33.

[2] *Parl. Pap.*, 1899, C. 7 (Germany, No. 1).

[3] As to this group, see Journal, N.S., i., p. 519.

[4] See Journal, O.S., ii., p. 202.

V. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.

[*Contributed by* ISRAEL DAVIS, ESQ.]

Acts passed—48.

University Qualifications for Legal Profession.—No. 3 enacts that notwithstanding an Act of 1896 it shall be lawful for the Supreme Court to admit to practise as advocates therein persons who, having, on or before August 14th, 1896, obtained after examination the degree of B.A. of the University of the Cape, shall thereafter have been admitted to the *ad eundem* degree in law of the said University. By No. 14 an attorney must have passed the matriculation examination at the Cape University or an equivalent examination.

Customs.—No. 5 amends the Customs Union Tariff Act of 1889, provides for paying over to the Government of Southern Rhodesia eighty-five per cent. of the customs collected, in lieu of the rebate formerly payable, and lays down conditions under which goods may be removed overland under bond from ports in Cape Colony to Southern Rhodesia. No. 21 imposes a duty on the export of Angora sheep (£100 per ram or ewe), with an exception in favour of export to South African States, territories, or Colonies which have imposed equivalent export duties.

Natives.—No. 5 empowers the Governor to suspend the operation of the Native Locations Acts in areas in which large numbers of natives are employed in mines or other works, and to lay down other regulations, including the payment of a hut-tax of ten shillings annually. No. 6 regulates the engagement of natives to work beyond the Colony. Labour agents are to be licensed. No 16 makes extensive grants of land to certain native chiefs, to be forfeited if canteens, etc., be established on the territories granted. No. 30 amends the law with regard to native locations.

Colonial Medical Council.—No. 7 amends the Act of 1891. If any person licensed as a medical practitioner or practising midwifery for profit shall, through uncleanliness or failure to take ordinary precautions against puerperal fever or any similar disease, cause injury or ill-health to any lying-in woman, such person may be fined £10, or imprisoned for one month, but no prosecution shall be initiated until the Attorney-General shall have, after consultation with the Medical Council if he thinks such consultation necessary, decided upon prosecution.

Mining for Precious Stones.—No. 11 consolidates and amends the law of prospecting and mining for precious stones. Any person may take out a licence to prospect on Crown lands or private property, the title to which contains a reservation to the Crown of precious stones and minerals, and

with the consent of the owner. On Crown land the prospecting area is a circle of one thousand yards in diameter, and the licence-holder may graze six horses or mules, or sixteen oxen, and take wood and water for his domestic use. Fifty claims in block may be selected. On private property the landowner is entitled to make the next selection of fifty blocks on payment of licence-moneys, and is entitled to share in the licence-moneys of proclaimed mines if he provides a depositing site. Provision is made for adding to the Mining Boards formed under the Act of 1883, and the election and powers of Boards are dealt with. The native reserves in British Bechuanaland are treated as Crown lands, but a share in the licence-moneys and other compensation for surface damage is to be paid to the Civil Commissioners.

Crown Lands.—No. 26 empowers the Governor to establish a Board for reduction or remission of the purchase price, quit-rents, etc., of Crown lands, and to fix "a fair rent or price." The Governor is at once authorised to reduce the quit-rents of more than a hundred specified farms by specified amounts; and on the recommendation of the Board to remit all or any arrears. The reductions immediately authorised are of large amounts—from £37 to £12, from £122 to £30, with further small permissible reductions, etc.

Legal Procedure.—No. 13 empowers resident magistrates to put interrogatories to witnesses in aid of similar civil Courts in neighbouring States and Colonies which (in the opinion of the Governor) make reciprocal provision.

Water Courts.—By No. 40 the Governor may appoint local Courts to determine disputes as to water rights. Unless there shall be good cause to the contrary, water districts shall coincide with magisterial districts. The Courts shall consist of a resident magistrate with two landowners selected from a list of assessors. The Courts may grant to persons entitled to divert water a further right to erect a weir or dam after notice to owners affected, but orders under this section may be appealed against as in any civil case.

Labour in Shops.—No. 21 adopts in principle the Imperial Act of 1899 relating to seats for female shop assistants. No. 32 provides that by consent of two-thirds of the shopkeepers in a district, shops may be compulsorily closed on Saturday or Thursday afternoons, except in weeks in which public holidays occur. The Act includes barbers, but not newsagents.

Employment of Children.—No. 44 adopts the principle of the Imperial Act as to the employment of children at places of public entertainment. The Attorney-General is constituted the officer to license employment.

Municipal Trading.—No. 22 gives the Municipal Council of East London certain powers to take and supply water from the Buffalo River.

Scab Act.—No. 28 amends the Act of 1894, and establishes a Scab Board in each division of the Colony. Infected sheep are to be simultaneously dipped under inspection.

British Bechuanaland.—By No. 38 there is an extensive repeal of proclamations referring to British Bechuanaland.

Protection of Birds and Fish.—No. 42 enables the Governor upon petition of local authorities to prohibit under penalty the destruction of particular kinds of birds. No. 43 empowers him to delimit fishing areas in the rivers and territorial waters of the sea, and to prohibit and control modes of fishing, use of nets and trawls, within such areas.

Registration of Voters.—No. 48 amends the law of Parliamentary registration. It deals with qualification by means of twelve months' occupation of premises and twelve months' receipt of salary or wages, and with disqualification by reason that the proposed voter is not a British subject, has been convicted of crime, is incapacitated on account of personation or corrupt or illegal practices, or is a minor or declared lunatic. All bars, canteens, etc., are to be closed on the day and during the hours of polling.

2. NATAL.

[*Contributed by* ISRAEL DAVIS, ESQ.]

Acts passed—43.

Cattle-Stealing.—No. 1 provides for the better prevention of cattle-stealing, the word "cattle" including, *inter alia*, ostriches. No person is to remove cattle without a pass. The inhabitants of a kraal shall have the right to stop any native driving cattle past such kraal and to demand from him information, and if dissatisfied to detain the cattle, the detention to be at once reported to the magistrate. Upon receiving a report from the magistrate that he is satisfied that some inmates of suspected kraals committed a theft or killing, or were otherwise party to it, and after certain preliminary steps, the Governor in Council may impose a penalty upon the heads of the kraals. Guilty natives not being women may be whipped as well as imprisoned. Butchers, auctioneers, and dealers are to keep registers of their dealings with cattle.

Municipal Trading.—No. 12 authorises the Durban Town Council to purchase the undertaking of the Durban Borough Tramways Company, Limited, and to equip that and other tramways with electric traction, etc., No. 39 confers upon the Town Council of Ladysmith additional borrowing powers to provide for the improvement and extension of the water supply.

Customs.—No. 13 consolidates and amends, in 168 sections, the laws relating to customs and such shipping laws as are connected therewith, including those relating to light dues. Wharf dues are not to exceed 10*s.* per £100 in value; tug dues not exceeding 3*d.* per £1 of the duties payable may be collected. Light dues and other charges are to be charged on deck cargo as well as on registered tonnage.

Quarantine.—By No. 14 the Law of 1884 as to quarantine regulations on

the inland borders of the Colony is extended to the whole of the Colony and amended. The Governor may order the destruction of any hut or shanty upon the recommendation of the district surgeon and on making compensation. By No. 26 the Governor may prohibit the landing of persons or things from ships which have sailed from infected places.

Inspection of Imported Cattle.—By No. 27 no cattle shall be allowed to enter the Colony by sea except on certificate signed by a duly qualified veterinary surgeon of the exporting country that they have been duly submitted to the tuberculin test and on inspection by an examiner of Natal. Animals proving to be affected by tuberculosis are to be destroyed at the quarantine station.

Electric Lighting.—No. 17 empowers the Minister of Lands and Works to license persons to carry wires for electric lighting across any public road, but the consent of the owners of the land abutting has to be obtained.

Copyright in Designs.—No. 19 establishes a register of designs and regulates copyright in designs. The general scheme of the Act is similar to part iii. of the Imperial Patents, Designs, and Trade Marks Acts, 1883 to 1888. Thus, ss. 13 to 19 inclusive of the Colonial Statute are almost identical with ss. 50 to 54 of the Imperial Patents Designs and Trade Marks Acts, 1883 to 1888; but instead of the words in s. 50, sub-s. 2, of the Imperial Act, "before delivery on sale of any articles to which a registered design has been applied," the words in s. 14 of the Colonial Act are "before delivery *or* sale," and the same difference is made in s. 15, corresponding with the Imperial s. 51. The Colony being already in possession of a complete system of land registration, it has not been necessary to establish a new officer, but the Registrar of Deeds is made the registrar for the purposes of the Act. The section giving provisional protection for objects exhibited at industrial or international exhibitions adds "inter-colonial" exhibitions to the privileged category, and also abstains from making the certification of the exhibition by authority a condition of the privilege.

Trade Licences.—No. 20, in amending the Licensing and Stamp Act of 1898, incidentally shows that licences are required by agents, apothecaries, retail dealers, stationers, advocates, law agents, conveyancers, notaries, architects, civil engineers, and land surveyors.

Explosives.—No. 23 regulates the manufacture of explosives. Factories are to be licensed. The duty of making from time to time detailed regulations is devolved upon the Governor in Council, and the Act is therefore very considerably shorter than the Imperial Act of 1875.

Legal Procedure.—No. 29 make provisions for the examination by interrogatories in aid of neighbouring Colonies, British possessions, and States similar to those made by No. 13 of the same year of the Cape. By No. 31 the Supreme Court is reduced from four members to three. The three judges are ordinarily to act in full bench except in criminal cases or trials with a jury, but any two judges shall form a quorum. In the event of

difference of opinion between two judges, the decision of the Court shall be suspended until all three judges shall be present, when the decision of the majority is to prevail.

Pledges of Certificates of Shares.—By No. 33 shares may be validly pledged by the legal holder threeof by delivery of the certificates, together with an instrument of pledge, but the Act shall not defeat the lien of the Company itself or alter rights between the Company and the registered holder.

Sale of Intoxicating Liquors.—No. 36 amends the Liquor Act, 1896. Retail licensed premises are still to be entirely closed on Sunday, but in addition to the provisions in favour of hotels and railway-stations, some exemptions are extended to restaurants, and to that interesting creature of the Imperial law, the *bonâ-fide* traveller.

Intestacy.—No. 38, in sixty-eight sections, amends and consolidates the law as to the administration of intestate estates, and amends the law as to registration of deaths. The Master of the Court may himself administer small intestate estates. In other cases the appointment and duties of executors dative are provided for in detail. A false claim wilfully made against an intestate estate is to be punishable as perjury, and other wilful contraventions of the Act are punishable by a fine not exceeding £10, or one month's imprisonment with or without hard labour. Where an intestate had his domicile in another country, in which his estate is being administered, and has left movable property in the Colony, the executors or administrators appointed in the country of domicile shall be entitled to take possession of and administer the movable property in the Colony, whether or not executors dative have been appointed in the Colony, subject to their obtaining an order of the Colonial Court and giving security, but the right to prove claims before the Master and rights of mortgagees and others are saved, and the Court may impose conditions and may decline to grant an order, if it be not satisfied that such order will be in the interest of the intestate estate as a whole, or that persons in Natal having claims against the intestate estate will be equitably treated and exempted from delay. The Registrar of Deeds shall not pass transfer of any immovable property which is registered in the name of an intestate without leave of the Court, or where the Master is authorised to allow sale or transfer, without the written sanction of the Master.

Mining.—No. 43 consolidates and amends the laws relating to mining. The right of mining for and disposing of all minerals is vested in the Crown, subject to the provisions of the Act. Persons may prospect and peg off four claims without a licence, but shall within fourteen days of pegging out obtain a licence. Licences may be issued to any person of either sex over the age of sixteen years of European birth or descent. The royalty is fixed at one and a half per cent. per annum on the value of minerals at the mine. An owner of land not being of European birth or descent may in respect

of land owned by him exercise all the rights and powers under the Act. Licences to prospect on private lands shall not be granted without notice to the owner, who shall have the right to lay objections before the Deputy-Commissioner of Mines, with an appeal to the Minister. In all running rivers and water-courses from which water is diverted for mining purposes, there shall be left running sufficient water for general use and for use of owners and occupiers of land. The pecuniary rewards for discoveries offered by the Cape Act of 1898 are not repeated in this Statute. Native servants may not be paid in gold or precious stones, and such wares are not to be purchased except from persons of European birth or descent, nor shall native gold or precious stones be disposed of except to bankers or licensed persons. Large powers are given to the Governor in Council to make from time to time regulations for carrying into effect the provisions of the Act.

VI. WEST AFRICA.

1. GAMBIA.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—18.

Protectorate.—No. 3 is an Ordinance for the Gambia Protectorate, and bears witness to unrest in that territory. It enables the Administrator to "banish any persom from the Protected Territories or from any part thereof; and may also order him to reside within any limits in the Colony or Protected Territories when he shall deem it expedient to do so for the promotion of security, peace, or order." If any person disobeys such order, he is guilty of felony, and is liable to imprisonment with or without hard labour for two years. The despotic power of banishment would have, at least, a better appearance if the Administrator were required to be satisfied of some good cause. But assuming that the order is founded on some good cause, it does not look well to pronounce disobedience a felony. Power to arrest without warrant might have been given.

Customs.—The customs tariff is amended and re-enacted (No. 4). The laws of Crown Colonies under this head are similar in type, but it is somewhat difficult to account for some of the liabilities and exemptions. Some articles, such as alcoholic liquors, oils, tobacco, and coffee, are taxed by measure or weight. All other goods not comprised in the table of exemptions pay an import duty of five per cent. *ad valorem*. Books are free "except ruled books or forms," an exception which seems hardly worth while making. Another exemption is of "machines (not bicycles) set in motion by hand or any power." Why should not the importation of

bicycles be favoured by every means at the Gambia? Carts and waggons "used for agricultural purposes" are exempt, but carriages, the introduction of which is highly desirable, both from the commercial and sanitary point of view, are liable to duty, probably for no other reason than that they are regarded as luxuries in temperate climes.

A revenue export duty of 6*s.* 8*d.* per ton is by No. 5 imposed upon ground nuts, but the Governor has power, with the approval of the Secretary of State, during bad seasons to reduce the duty.

Statute Law Revision.—A revised edition of the Ordinances of the Colony is provided for by No. 7. The preparation of the new edition is entrusted to Mr. A. D. Russell, Chief Magistrate of the Colony. The powers are similar to those given in recent years in other Crown Colonies.

Shipping Casualties.—An Ordinance of seventy-five sections (No. 8) deals with this department of Merchant Shipping Law. It is divided into four parts, dealing respectively with enquiries, receivers of wrecks, salvage, and conveyance of wrecked passengers.

Police Force.—In accordance with the precedents afforded by other Crown Colonies and Protectorates in Africa, the police force of the Colony is by Ordinance No. 9 reconstituted as a semi-military force. The constables are to perform ordinary police duties in times of peace, but they may be called upon to serve as soldiers within or beyond the Colony and Protectorate. They are amenable to the ordinary Courts of Justice in respect of all ordinary offences, but may be punished by their officers for certain offences against discipline. For mutiny, sedition, and desertion they may be tried in the ordinary Courts, but it is also provided that when the force is on service beyond the Colony, or when it may appear necessary for good order and discipline, the Administrator may by Order in Council bring into operation the Army Act.

Petroleum.—The importation of petroleum is regulated by a short Ordinance (No. 10). The only notable provision is that no petroleum with a flash point of less than ninety-five degrees is allowed to be landed in the Colony under any conditions.

Sunday Cargo Work.—The loading and discharge of ships on Sunday is prohibited; but in case of urgency permits for Sunday labour are given on payment to the Collector of Customs of a fee proportioned to the tonnage of the ship.

Criminal Law.—All Acts of the Imperial Parliament passed between October 17th, 1821, and November 27th, 1843, which in any manner amend or alter the Criminal Law, and about twenty subsequent Acts (including the Criminal Law Acts of 1861 and Jervis Acts of 1848), are declared to be in operation in the Colony (No. 14).

2. GOLD COAST.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—14.

Special Constables.—Power is taken to the Governor to authorise the District Commissioners to appoint and swear in special constables on occasions of trouble.

Political Offenders.—Power is taken to detain or deport a political offender, Akrofi, Chief of Larte, and also to receive and detain certain political offenders from Sierra Leone (Nos. 2 and 10).

Estates of Africans Administration.—The Ordinance on this subject which was not sanctioned by her Majesty in 1898 is now passed in an amended form. It applies to natives of Africa dying within or without the jurisdiction who at the time of their deaths or previously were employed under foreign contracts of service made under the Master and Servant Ordinance, 1893. The Chief Registrar is appointed Official Administrator, and all the estates of those natives are vested in him. He has power to recover all wages due to the deceased, to decide claims in the distribution, and generally to wind up the estate.

Public Holidays.—Ordinance No. 6 is similar to the Lubbock Act in the United Kingdom. Coronation Day and the Prince of Wales's Birthday were added to the schedule, but are struck out by a subsequent Ordinance (No. 14).

Fires and Occurrences Enquiries.—Provision is made for inquests as to the origin of fires, as in the recent London Act; also "where any occurrence takes place resulting in serious injury to person or property." Whether an enquiry is desirable is left to the District Commissioner and the Attorney-General.

Supply.—It may be of interest to note that the Supply Ordinance for 1899 placed a charge on the Colony of £429,086, as against £287,036 in 1898.

Corporal Punishment.—The number of strokes at each flogging is limited to twenty-four.

3. LAGOS.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—7.

The Ordinances passed in this Colony are few in number, and with one exception present no features of general interest. Attention may, therefore, be drawn to the unmethodical manner in which the Ordinances are issued. In the seven Ordinances there is a variety in the tint and texture of the

paper used, and there is an entire want of uniformity in the printing of the heading and other formal parts.

Tariff.—The import duty on spirits, not being liqueurs or cordials, is fixed at 3*s.* per gallon (No. 3).

Quarantine.—The prevalence of plague has induced many Colonies to see to their quarantine laws, and Lagos accordingly (No. 5) repeals and re-enacts with considerable additions its Act of 1880.

Railway.—Some amendments of the Railway Ordinance of 1897 are made by No. 6.

Native Children.—A very useful Ordinance in the nature of a Reformatories Act (No. 7) provides for the care and custody of native children (*a*) who have been guilty of offences, or (*b*) who are orphans or deserted by their relatives. In such cases the District Commissioner may issue a mandate authorising the placing of such a child in a Christian mission, in a Government establishment or ship, or in the hands of some private person. The child must be under fifteen when the mandate is issued, and he ceases to be under its thraldom when he reaches eighteen.

4. SIERRA LEONE.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—27.

Tariff.—Sierra Leone, like the Gambia, has been re-enacting its customs tariff (No. 1), but here the scale of duties is exceptionally high, proportioned, doubtless, to meet the heavy expenditure occasioned by the recent disturbances. There is a special schedule of duties on particular goods, followed by a table of exemptions; all other goods have to pay a duty of ten per cent. The table of exemptions shows signs of undue severity. Fish, meat, and fruit only escape the duties when not preserved in any way. Books, except Bibles and books solely intended for educational purposes, are liable to the full duty. All carriages, bicycles, etc., are taxable.

Steam Whistles.—The blowing of steam whistles on ships is prohibited in the harbour of Freetown during Sundays, and between 9 p.m. and 5 a.m. on week-days (No. 2).

Political Prisoners.—Two Ordinances (Nos. 3 and 8) authorise the dedention of six chiefs who were engaged in the recent rebellion. Writs of *habeas corpus* are suspended, and the Governor has authority if he thinks fit to deport them from the Colony.

The Protectorate.—The Sierra Leone Government rules a large area which is beyond the Colony, and under the protectorate of her Majesty. This Protectorate is under special laws, and is divided into districts, governed more paternally than the Colony. As a result of the recent rebellion, the

Governor has power (No. 6) to rearrange the districts of the Protectorate and to (temporarily) include therein places within the limits of the Colony. While so included, all such places are to be subject to the laws of the Protectorate, and the Ordinances of the Colony are not to apply, except such as are already in operation in the Protectorate. The meaning of the Ordinance is that parts of the Colony require a somewhat firmer handling for the present. Another Ordinance (No. 27) makes warrants of arrest run throughout the Colony and Protectorate.

Cruelty to Animals.—A law of the normal type on this subject (No. 7) is applied, not only to domestic animals, but to all animals kept in confinement.

Escheat.—Where the Supreme Courts declare any land to be vested in the Crown by escheat, the judge is required to annex a report pointing out the person or persons, if any, who may, in his opinion, be entitled to the favourable consideration of the Governor.

Volunteers.—The Volunteer Force Ordinance of 1898 is repealed, and a new measure is substituted (No. 16).

Travelling Allowances.—A scale of travelling allowances is fixed (No. 17) according to status. Officers drawing £600 a year or over get £1 per diem.

Corporal Punishment.—The same limitation to twenty-four strokes at a flogging is imposed (No. 19) as at the Gold Coast.

Swine.—The keeping of swine within the limits of Freetown is prohibited, and the Governor has power to extend the prohibition to any other town or village (No. 22).

Freetown Improvement.—Ordinance No. 23 is a measure for the improvement of Freetown, drawn on lines similar to the Improvement Acts of towns and districts in England. Its principal headings are Buildings, Streets, and Fences. A notable provision is that if a building is allowed to remain in an unfinished state for six months after the time allowed by the Council for its completion, it is to be assessed at double the rate to which it would have been liable if finished. Fences of living plants are prohibited in certain wards of the city, and barbed wire must not be used for fencing along streets.

VII. SOUTH ATLANTIC.

1. FALKLAND ISLANDS.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—4.

Seal Fishery (No. 1).—This is an important industry in the Islands. The present Act provides for the issue of sealing licences to applicants on payment of £10, and on certain terms as to royalties and accounts of seals taken, and enacts penalties against killing or capturing seals without a licence or during the close season. A moiety of the penalty is given to informers. "Seal" includes many strange varieties—the sea-elephant, the sea-leopard, the sea-bear and the sea-lion.

Wrecks (No. 3).—This Act provides for the appointment of district receivers of wrecks, authorises them to press men and vehicles for the preservation of wrecks, and to claim possession of all cargo or articles washed ashore. When a receiver has reason to suspect that wreckage has been improperly dealt with, he may obtain a warrant to enter and search any house. His remuneration is a percentage (£5 per cent.) on realised wreck.

Supply (Nos. 2 and 4).—These are Supply Acts.

2. ST. HELENA.

Ordinances passed—5.

Supply (Nos. 2, 3 and 5).—These are Supply Ordinances.

Probates (No. 4).—This is an Ordinance to provide for the recognition in St. Helena of probates and letters of administration granted in the United Kingdom and in British possessions. Any probates or letters of administration so granted may, on being produced to, and a copy thereof deposited with, the Supreme Court of St. Helena, be sealed and have the same effect in St. Helena as if granted by the Supreme Court of the Island.

VIII. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. SIMON, ESQ.]

Acts passed—Public, 49; Local and Private, 86.

Railways.—No. 7 authorises the Governor in Council to grant in aid of the construction of certain lines of railway subsidies at the rate of $3,200 per mile, with the additional grant, where the average cost of construction exceeds $15,000 per mile, of fifty per cent. of such excess. By s. 8 the subsidised companies are to credit the Government with a sum equal to three per cent. per annum of the amount of subsidy to go towards payment for transportation of mails, soldiers, Government supplies, etc.

No. 37 amends the Railway Act, conferring on companies certain powers of entry upon highways for the purpose of constructing and maintaining lines of telegraph or telephone. Sub-s. *d* of s. 2 runs: "The company shall not be entitled to damages on account of its poles or wires being cut by direction of the officer in charge of the fire brigade at any fire if, in the opinion of such officer, it is advisable that such poles or wires be cut." (The protection afforded by the Metropolitan Fire Brigade Act, 28 & 29 Vict., No 90, s. 12, is less specific: cf. *Maleverer* v. *Spinke*, Dyer 35a, 36b.) By sub-s. *h* every workman engaged in erecting or repairing telegraph lines or instruments must wear a "badge, on which are legibly inscribed the name of the company and a number by which he can be readily identified."

Bounties on Steel and Iron.—No. 8, while continuing for a further period the bounties authorised by an Act of 1897 on home-made steel and iron, provides for their gradual reduction until they are extinguished on June 30th, 1907.

Dry Docks.—No. 9 repeals previous Statutes and re-enacts in a new form the powers of the Governor in Council to authorise in certain cases a subsidy, not exceeding two per cent. per annum on the cost of the work, payable for twenty years, to a company constructing a dry dock approved by the Minister of Public Works.

Ottawa Improvement Commission.—No. 10 establishes a body of this name and authorises an annual grant of $60,000 for not more than ten years out of the Consolidated Fund for the purpose of improving or beautifying the capital by parks, streets, etc. S. 15 gives the Government a return for its money in the shape of discharge from liability to the Ottawa Corporation for water supplied to Government buildings.

Yukon Territory.—No. 11 amends the Yukon Territory Act of the previous year (p. 530 of this Journal, N.S., 1899, No. 3) by introducing the principle of popular representation. All adult male British subjects who

have continuously resided in the Territory for not less than twelve months are to join in electing two representatives to the Territorial Council—*i.e.*, one-fourth of the whole body. These elected members hold office for two years. By s. 3 the permission of the Governor in Council is needed for the manufacture in, or importation into, the Territory of any intoxicating liquor. By s. 7 the Supreme Court of British Columbia is constituted a Court of Appeal from the Territorial Court.

Payment of Members.—No. 12 provides that the deduction of eight dollars a day made for each day of non-attendance beyond fifteen shall not extend to the case of a Member who is an active militiaman, so far as regards "days spent on duty with his corps in a regularly organised militia camp or in travelling between Ottawa and such camp."

Insurance.—No. 13 is an Act "to further amend" the Insurance Act in numerous particulars.

Inspection of Grain and Hay.—No. 25 amends the General Inspection Act, prescribing anew the various grades of wheat, Indian corn, oats, etc., and imposing a penalty of not exceeding $500 upon every person who fraudulently uses an inspector's certificate in connection with grain other than that for which it was given.

Petroleum Inspection.—No. 27 is a new Code of thirty-five sections for this purpose. By s. 7 the flash-point for petroleum intended for sale is fixed at 85° Fahrenheit. By s. 15 every refiner, importer, or salesman of petroleum or naphtha shall be responsible as to its quality. By s. 16 all petroleum and naphtha made in Canada and not intended for exportation must be inspected before leaving the manufactory, and all imported petroleum and naphtha is to be inspected at customs ports. Ss. 22–31 prescribe penalties.

Public Health.—No. 30 authorises the Governor in Council to make regulations for preserving health and mitigating disease among persons employed in the construction of "public works," including every railway, canal, bridge, telegraph, and other work within the legislative authority of the Parliament of Canada.

Protection of Navigation.—No. 31 amends the Act respecting the protection of navigable waters by imposing a penalty on any person who allows any material or rubbish liable to sink to the bottom to be thrown into navigable waters where there are not at least eight fathoms of water if non-tidal, and twelve fathoms at low tide if tidal.

Companies.—No. 40 permits directors to make a bye-law for creating and issuing any part of the capital stock as preference stock, provided that such bye-law has been unanimously sanctioned by a vote of shareholders representing two-thirds of the stock, or has been approved by the Governor in Council after three-fourths in value of the shareholders have expressed their approval.

No. 41.—This Act takes the place of existing provisions as regards

the future formation, incorporation, and amalgamation of loan companies. By s. 4 any five or more adults may apply to the Governor in Council for letters patent under the Great Seal incorporating them as a "loan company"—*i.e.*, a company undertaking in Canada the business of lending money on the security of, or purchasing or investing in, mortgages upon immovables and securities (other than bills of exchange and promissory notes) of public corporations, chartered banks, or Canadian incorporated companies.

Prisons.—No. 48 further amends the Penitentiary Act. No. 49 provides for the conditional liberation of convicts under licences to be at large, subject to periodical notification by the holders to the police.

2. BRITISH COLUMBIA.[1]

[*Contributed by* WALTER PEACOCK, ESQ.]

Acts passed—89.

Elections.—The Provincial Elections Act Amendment Act, 1899 (No. 25), provides for a six months' instead of a twelve months' register. Those disqualified from being entered on the register include judges of Supreme or county Courts, sheriffs or deputy sheriffs, Provincial Government employees in receipt of salaries or at least $300 per annum, sailors, soldiers on full pay in Imperial service. This, however, is not to apply to Ministers of the Crown, the Speaker, members of the Legislative Assembly, or school teachers. New provisions are passed with regard to the recount of ballots by the county court judge.

Administration of Justice.—No. 20 amends the Supreme Court Act with regard to the sittings of the full Court for hearing appeals and other matters.

The Absconding Debtors Act Amendment Act, 1899 (No. 22), enacts that the delivery of a writ of attachment to a sheriff shall not bind the land of the person against whom it is issued, nor shall any land be attached or seized under any writ of attachment; and provides for the issue of certificates respecting proceedings in the Court from which the writ of attachment has issued, the registration of certificates, and the procedure to enforce them.

The Execution Act Amendment Act, 1899 (No. 27), abolishes the writ of *fieri facias de terris*.

The Judgments Act, 1899 (No. 33), provides that on any judgment being entered or recovered, a certificate of such judgment signed under the seal of the Court in which judgment has been entered by the officer of the Court empowered to grant certificates may be registered in the Land Registry Offices and Land Titles Offices in the province, and from the time of register-

[1] The Session 62 Vict. began on January 5th, 1899, and ended on February 27th. Of the Acts passed—eighty-nine in all—seventy-seven are classed as Public, the remainder as Private Acts.

ing the judgment shall form a lien on the lands of the judgment debtor. The lien shall cease in two years unless the judgment has been re-registered. Fraudulent deeds and conveyances rendered void by 13 Eliz., No. 5, shall be void. A judgment creditor who has registered a certificate of judgment may get a fraudulent conveyance on the part of the debtor set aside by motion in the Supreme Court calling upon the judgment debtor to show cause why the land should not be sold to realise the amount payable under the judgment.

The Jurors Act Amendment Act, 1899 (No. 35), provides that the panel of grand jurors shall consist of thirteen grand jurors and no more.

The Replevin Act, 1899 (No. 63), provides that where goods have been wrongly distrained the person complaining may bring an action of replevin, or where goods have been wrongfully taken or detained, the persons capable of maintaining an action for damages may bring an action of replevin for the recovery of goods, and may claim for and recover the damages sustained. But the Act does not extend to goods taken in execution by the sheriff under any writ. Actions of replevin may be brought in the county court. The schedule contains replevin rules in which the writ of replevin is abolished. A party who is entitled to replevy goods may obtain an order therefor in an action commenced by a writ of summons.

No. 69 amends the Summary Conviction Act with regard to procedure in the execution of distress warrants.

Civil Service Departments.—The Attorney-General's Act, 1899 (No. 5), provides for a department of the civil service to be called the Department of the Attorney-General, over which the Attorney-General shall preside. In addition to being the official legal adviser of the Lieutenant-Governor, his duties include the superintendence of all matters connected with the administration of justice, the superintendence of prisons, etc. He shall see that the administration of public affairs is in accordance with the law, and is generally entrusted with the powers and duties belonging to the office of the Attorney-General and Solicitor-General of England as far as applicable to the province.

The Department of Lands and Works Act, 1899 (No. 37), provides for a Department of Lands and Works to be presided over by the Chief Commissioner of Lands and Works, appointed under the Great Seal of the province, and to consist of two branches. The lands branch will be under a Deputy Commissioner of Lands and shall have charge of public lands and water rights. The works branch will be under the Chief Engineer, whose duty it will be to cause to be prepared plans and estimates of all public works about to be constructed or repaired by the Department; to report on questions of public works submitted to him, and generally to advise the Department on all architectural and engineering questions affecting public works. Other officers may be appointed by the Lieutenant-Governor in Council.

The Department of Mines Act, 1899 (No. 48), provides for a Department of Mines to be presided over by the Minister of Mines, which will have charge of all matters affecting mining, including the administration of the laws with respect to all kinds of mining. The Lieutenant-Governor in Council may appoint a Deputy Minister and other officers.

The Provincial Secretary's Act, 1899 (No. 59), provides for a Department of the Provincial Secretary, who will preside over it and be the keeper of the Great Seal of the province, and shall issue all letters patent under the Seal and countersign them. He shall be keeper of all registers and archives of the province, and all the powers assigned by law to provincial secretaries and registrars of the different provinces of the Dominion of Canada so far as applicable to British Columbia; he shall also be Provincial Registrar, and shall register all letters patent, writs, etc., and have charge of all matters connected with the holding of elections for the Legislative Assembly, and shall make an annual report to the Lieutenant-Governor.

The Revenue Act Amendment Act, 1899 (No. 65), provides for a Department to be called the Treasury Department, presided over by the Minister of Finance, which shall have the management and control of the revenues and expenditure of the province. The Lieutenant-Governor in Council may appoint a Deputy Minister of Finance and such other officers and servants as may be required.

Revenue.—The Revenue Tax Act Amendment Act (No. 66) brings all employers of labour within the Revenue Tax Act; but permits the employer to deduct the tax from amount payable to employees.

No. 68 amends the Succession Duty Act with regard to the property liable to succession duty, which includes—

(i) Property situated in the province;
(ii) Property voluntarily transferred in contemplation of death;
(iii) Donations *mortis causâ*, or voluntary dispositions made within twelve months before death;
(iv) Property transferred by owner to himself jointly with some other person;
(v) Property passing under a settlement;
(vi) Annuities to the extent of the beneficial interest arising by survivorship or otherwise on death of deceased.

The sub-sections regulating the amount of duty payable are re-enacted.

Queen's Counsel.—The Queen's Counsel Act, 1899 (No. 60), provides that upon the appointment of any person to the office of Attorney-General a commission shall forthwith be issued appointing him one of her Majesty's counsel learned in the law. Ex-Attorney-Generals are also to be appointed, and not more than five other persons who have at least five years' standing at the Bar of the province, within three months from the Act coming into force, and not more than two persons annually.

Municipalities.—The Municipal Districts Act, 1899 (No. 54), provides for

the government of particular territory to which a sudden rush of people has been drawn by the discovery of mineral wealth, and empowers the Lieutenant-Governor in Council to declare certain specified territory to be a municipal district, in which all the powers conferred upon the councils by the Municipal Clauses Act shall be vested in the Lieutenant-Governor in Council.

No. 55 amends the Municipal Incorporation Act by authorising the Lieutenant-Governor in Council to incorporate into a city or town municipality any locality upon receiving a petition from the property owners of more than one-half the value of the land to be included, provided there be within the boundaries at least one hundred male British subjects of twenty-one years.

Land.—The Land Act Amendment Act, 1899 (No. 38), re-enacts the clauses of No. 113 of the Revised Statutes, which deal with sale and leases of Crown lands. Coal and petroleum are reserved from all Crown grants.

Registration.—The Torrens Registry Act, 1899 (No. 62), provides for the formation of land titles districts for each of which the Lieutenant-Governor in Council shall appoint a barrister or solicitor of British Columbia to be Land Registrar, and other officers as may be deemed advisable. He may also appoint one or more inspectors of land registries.

Manner of bringing Lands under New System.—As soon as any portion of the province is constituted into a land titles district, all registrations under the old system shall cease, and all registrations shall in the first place be made by an application to bring the lands under the new system. "The owner of any estate or interest in land may . . . apply to the proper Land Registrar and have his title registered under the new system. And each person entitled to any estate or interest in such land, whether legal or equitable, and whether it be a life estate or an estate in remainder or reversion, shall be entitled to a separate certificate for such estate or interest." When application is made by the owner of the equity of redemption to bring mortgaged lands under the new system, the application shall be deemed to be for the whole estate, both legal and equitable. The Land Registrar shall serve notice on any adverse claimant that certificate of title will issue unless the claimant within a limited time file a *caveat* forbidding its issue. The evidence of title upon which the Land Registrar may act need not be sufficient in strict point of law, provided he is satisfied, but rules are laid down for his guidance.

Effect of Registration.—The title of registered owner shall be deemed to be subject to reservations in Crown grants, Government and municipal rules and taxes, easements, leases not exceeding three years, certificates of attachment duly registered, *caveats*, etc. Every certificate of title, which shall be in duplicate signed by the Land Registrar and sealed with the seal of his office, shall be conclusive evidence that the person named therein is entitled to the land, and no action of ejectment shall be brought against the registered owner except in certain cases, as of a mortgagee against a mortgagor in default.

The Powers of the Land Registrar.—He may require the production of documents, summon witnesses, correct errors in certificates, enter *caveats* on behalf of her Majesty, infants, and persons of unsound mind or absent from the province to prohibit the transfer or dealing with any land belonging, or supposed to belong, to the Crown, etc.

Transfers.—The memorandum of transfer shall for description of land refer to the certificate of title, and shall contain an accurate description of the estate or interest to be transferred, and a memorandum of all leases and incumbrances to which it may be subject. The form is prescribed in schedule B. No words of limitation are necessary in order to convey all or any title.

Leases.—Every instrument shall refer to the certificate and shall be in prescribed form. Covenants by the lessee are implied for payment of rent, rates, and taxes, and repairs, and there is an implied power in lessor of entry to view state of repairs, and re-entry for breach of covenants.

Mortgages.—Incumbrances created prior to issue of certificate of title may be filed in the office of the Land Registrar, who shall endorse on the certificate and duplicate a memorandum of such incumbrance. A mortgage under the new system shall have effect as security, but shall not operate as a transfer of the land thereby charged. In case of default in payment for the space of one calendar month the mortgagee may, after giving written notice, a copy of which must be filed in the Land Titles Office, to the mortgagor, enter into possession of the land and receive the rents, and whether in or out of possession may make any lease of the same or any part thereof as he may see fit, and if such default continue for the further space of a calendar month, he is authorised to sell the land, and the sale shall be as valid and effectual as if the mortgagor had executed the same.

Minerals.—The Mineral Act Amendment Act, 1899 (No. 45), and the Placer Mining Act Further Amendment Act, 1899 (No. 51), modify the form of a free miner's certificate and provide for a special certificate to be obtained upon payment of a fee of fifteen dollars by any free miner whose free miner's certificate has been allowed to expire. Such special certificate shall have the effect of reviving the title of the person to whom it is issued to all mineral claims which such person owned at the time of the lapse of his former certificate.

The Placer Mining Act Amendment Act, 1899 (No. 50), re-enacts s. 3 of No. 136 of the Revised Statutes as to persons who are entitled to rights of free miners.

No. 58 extends the rights of the Crown to prospect for minerals on railway lands to all free miners.

Liquor.—The Liquor Traffic Regulation Act Amendment Act, 1899 (No. 41), imposes penalties on the holders of retail liquor licences who allow gambling on their premises.

Liquor Licences.—The Liquor Licences Act, 1899 (No. 39), provides for

the formation of licence districts, and a Board of two honorary Licence Commissioners for each district meeting twice a year. All provincial constables are to be licence inspectors, and a chief licence inspector is to be appointed for each district. Licences may be hotel licences or wholesale licences. Liquor licences signed by the chief inspector and granted for six months or a year shall be licences only to the person therein named, and for the premises therein mentioned.

Applications.—Each applicant shall forward to the chief inspector a petition for the granting of such licence signed by at least two-thirds of the resident householders, his own affidavit stating that he is twenty-one, is not a felon, and has been resident in British Columbia for a year, the affidavit of neighbours as to character, etc., and his bond in the sum of five hundred dollars as security for payment of all fines and penalties which may be incurred under the Act. At least fourteen days before the meeting of the Board the chief inspector shall advertise a list of applications and the place of meeting of the Board. On application for a hotel licence the inspector shall make a report in writing to the Commissioners, containing—

(1) A description of the house;
(2) If the applicant be the existing licensee, a statement as to the manner in which the house has been conducted, the character of frequenters, and convictions, if any;
(3) A statement of the number, position, and distance of licensed houses in the neighbourhood;
(4) A statement whether the licensing of the premises is required for public convenience; and
(5) A statement whether the applicant is or is not the true owner of the business of the hotel.

The applications shall be heard and determined by the Commissioners in a summary manner. The Commissioners have power to cancel licences where premises are not kept in accordance with the provisions of the Act.

Trade Licences.—The Licences Act, 1899 (No. 40), compels persons using certain trades, occupations, or professions to take out licences, paying sums as specified in schedule—*e.g.*, billiard-saloon keepers, five dollars for each table for every six months; barristers, twenty-five dollars for every six months; bankers, four hundred dollars for one year.

Labour.—No 43 repeals the Master and Servant Amendment Act, 1898, which dealt with contracts of service prior to coming to Canada, and re-enacts the clauses, subsituting the words "British Columbia" for "Canada."

Special Surveys.—The Special Surveys Act, 1899 (No 71), empowers the Attorney-General to direct a special survey to be made of any lands in a city for the purpose of correcting any error in respect of any existing survey or plan, such special survey to be made under the guidance and instructions of the Inspector of Land Titles Offices. The Act provides for the hearing

of objections to the plan, and on its approval it shall become the official plan of the portion of the city thereby affected, and shall be binding on all owners, corporations, and persons.

Toll Roads.—The Development Toll Roads Act, 1899 (No. 75), empowers the Lieutenant-Governor in Council, out of moneys borrowed for the purpose, to construct public roads to be known as "development toll roads," to appoint toll-gate keepers, and to fix the rate of toll, to be based upon the amount required to pay cost of maintenance and interest upon money used on construction and an annual sinking fund of at least one per cent. upon the cost of construction.

Steam-Boilers Inspection.—The Steam-Boilers Inspection Act, 1899 (No. 10), provides for the appointment of district inspectors of steam-boilers whose duty shall be to inspect all steam-boilers over two horse-power not subject to the supervision of the Dominion of Canada, at least once in each year, and to give certificates of inspection and to investigate accidents to boilers. Penalties are imposed for constructing defective boilers and operating uncertificated boilers.

Fire Precaution.—The Fire Escape Amendment Act, 1899 (No. 28), provides that the doors of all public buildings shall open outwards as a precaution in case of alarm from fire or other causes.

Definition of Time.—No 74 amends the Definition of Time Act, 1898, and provides that where an expression of time occurs in any Act or legal instrument, it shall be held to be Pacific standard time—*i.e.*, eight hours behind Greenwich time—unless otherwise stated.

3. NEW BRUNSWICK.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—87.

Supplies.—No. 1 contains a money grant for defraying the civil expenses of the province to October 31st, 1900.

Marriage (No. 4).—The Solemnisation of Marriage Act provides for the registration of persons authorised to solemnise marriages, and forbids unregistered persons to solemnise marriages. No person can be authorised to solemnise marriages unless he be a Christian minister or teacher having charge over a congregation in the province or connected therewith, or a commissioner and staff officer of the Salvation Army having charge of a division or branch of the Army within the province, or a Christian minister or teacher resident in the province who has been superannuated or placed on the supernumerary list.

[1] The Session 62 Vict. began on February 15, 1899. Of the Acts passed in this Session 40 were public Acts, 26 were local, and 21 private.

Marriages must take place in the presence of two or more credible witnesses, and no person may knowingly solemnise any marriage when either party is under the age of eighteen years without the consent of the father or guardian. All marriages which have, before the passing of this Act, been solemnised in good faith, and the parties have cohabited as man and wife, are to be deemed valid unless the parties were not legally authorised to enter into matrimony by reason of consanguinty, affinity, or otherwise. The issue of persons informally married at the date of this Act are declared to be legitimate.

Coroners (No. 5).—The Coroners Act, 1900, amends the law relating to inquests. This Act is framed on the Imperial Coroners Act, 1887.

Technical Education (No. 8).—This Act authorises the Lieutenant-Governor in Council to enter into arrangements with the Governors of Nova Scotia and Prince Edward Island for the establishment of a school for furnishing instruction and technical training in agriculture, horticulture, mining, and mechanical arts.

Consolidated Statutes.—No. 9 provides for the further consolidation of the Statutes of the province.

Canadian Troops (No. 11).—This Act legalises the grants made by the municipal, city, and town councils within the province in aid of the Canadian forces sent to South Africa.

Public Health (No 21).—This Act amends the Public Health Act, 1898, and empowers the Lieutenant-Governor to grant money to any county, city, or town to aid in the suppression of smallpox.

Destitute Persons (No. 26).—This Act imposes on persons bringing or landing persons who are likely to become a public charge upon the rates, such as cattlemen on steamships, the liability of paying two dollars per diem for the support of such persons, if destitute. But the persons liable for this sum may, if necessary, take by force and remove the destitute persons to the boundary of the province. "Destitute persons" are defined to be persons who solicit funds to enable them to pay the cost of travelling from the province, or being in want of shelter or the necessaries of life.

Schools (No. 32).—The Schools Act, 1900, amends and consolidates the Statutes relating to schools. It contains 124 sections. The general management of schools and school property is under the control of the Board of Education, which consists of the Lieutenant-Governor, the Executive Council, the Chancellor of the University of New Brunswick, and the Chief Superintendent of Education.

Game.—No. 39 amends the Game Act, 1899. Persons not resident in the province must, for certain animals or game, take out a licence, costing thirty dollars. No person may hunt or kill birds on the beaches, islands, or lagoons bordering the tidal waters along Northumberland Strait, the Gulf of St. Lawrence, and the Bay of Chaleur between December 31st and September 1st. The exportation of partridges is also forbidden.

4. NOVA SCOTIA.

[*Contributed by* L. S. BRISTOWE, ESQ.]

Acts passed—Public General 55; Local 70; Private 82.

Roads.—No. 1 makes provision for the formation and repair of roads. The council of every municipal district is required to divide its district into road districts, the councillors of the polling districts included in a road district constituting the road board. The council may also, but are not bound to, appoint supervisors, the duties of supervisors being, in default of such appointment, performed by the road board; and the supervisor of any road district may (subject to the approval of the road board) divide his district into road sections.

The duties of the road boards include examining into the condition and requirements of roads and bridges in their districts, and receiving reports from the supervisors thereon, appointing overseers, and reporting annually to the council as to the efficiency of the supervisors and overseers.

The duties of the supervisors include reporting to the board the division of the district into road sections, and recommending a suitable overseer for each section, ascertaining the condition and requirements of roads and bridges, and the amount of highway labour available and the money required and available for expenditure on roads and bridges, and expending the money apportioned to the section.

Provision is made for the apportionment among the road districts and the payment and expenditure of the road and bridge moneys granted by the Legislature to each municipality, and for making contracts for the construction and repair of roads and bridges. The supervisors are given large powers as to procuring materials for the construction and repair of roads and as to the planting of trees, drainage, and the removal of encumbrances, nuisances, and projecting buildings.

Every male between the ages of sixteen and sixty is made liable to do two days' labour on the roads, or to pay a poll-tax. The duty of overseeing the statute labour is entrusted to the overseers, under the supervision of the supervisors, and a variety of provisions are inserted for the enforcement and regulation of this labour.

Timber Lands.—No. 3 authorises the Governor in Council to grant leases of the right to cut and remove timber in lieu of issuing grants as heretofore. The leases may be for twenty years, with a right of renewal for a further period of twenty years, and at a price of not less than forty cents per acre. Leases of Crown lands of inferior quality may be granted on special terms, and leases of the right to erect dams and sluices for the purpose of floating timber down rivers may also be granted.

Foreshores, etc.—No. 4 authorises the Governor in Council to issue

grants or leases of ungranted river-beds, beaches, or foreshores and fish-traps and weirs.

Iron and Steel.—No. 5 enables the Governor in Council by order to refund for not more than eight years one-half of the royalty paid on coal used in the making of iron and steel to any company now engaged in such business, or organised and commencing operations within twelve months from August 1st, 1899, and erecting within two years buildings, machinery, and plant to a specified amount.

Agricultural College, etc.—No. 6 authorises the establishment by the Governor in Council of an agricultural college and experimental farm with professors, etc., and provides for the granting of houses to municipalities for the establishment of creameries.

Supreme Courts.—No. 15 requires the Accountant-General and Prothonotaries of the Supreme Courts to make annual returns of funds in Court.

Descent of Real and Personal Property.—No. 17 amends No. 90 of the Revised Statutes, 5th Series, "of the descent of real and personal property," by providing that in default of issue one-half—or if there is no kindred, the whole—of the property of an intestate shall go to his widow.

Conveyance of Timber.—No. 19 declares the rights of persons to float timber down rivers, creeks, and streams during the spring, summer, and autumn freshets, and provides for the removal of obstructions.

Juries.—No. 25 is a general Act relating to juries. It prescribes the qualification for grand jurors and petty jurors, with a list of exemptions and disqualifications. It provides for the appointment of local committees to revise and prepare the jury lists, the preparation and amendment of the jury book for each county being entrusted to the Prothonotary. Provision is also made for drawing jurors and preparing jury panels and for the attendance and organisation of juries, and for the payment of fees and fines for non-attendance.

Marriage.—No. 26 re-enacts and consolidates the law relating to the solemnisation of marriage. Except as otherwise provided, every marriage is required to be solemnised by a clergyman. The Governor in Council is authorised to appoint issuers of marriage licences, and marriages are required to be by banns or licence. Provisions are inserted as to the publication of banns and as to the form of, and mode of application for, licences. Marriages of members of the Salvation Army may be solemnised by a male commissioner or staff officer of the Army, and marriages so solemnised must be by licence. Marriages are required to be in the presence of two witnesses and provisions are made as to the filling up of marriage certificates and as to returns by clergymen and issuers of licences, and various penalties for breaches of the Act are imposed.

Barristers and Solicitors.—No. 27 consolidates the law as to barristers and solicitors. It provides for the appointment of Queen's Counsel by the Lieutenant-Governor, and for the admission of barristers and solicitors

after serving articles of clerkship to a practising solicitor for four years. Barristers of any of the superior Courts in Great Britain or Ireland are entitled to be admitted as barristers in Nova Scotia, and also barristers in any Colonies which extend a corresponding privilege to Nova Scotia. Colonial barristers and solicitors, and solicitors of any Court in Great Britain and Ireland, may be admitted as solicitors on passing the final examination. An oath is required to be taken by every person admitted as a barrister. Certificates are necessary as a preliminary to practising either as a barrister or a solicitor. The Act also contains provisions regulating the Nova Scotia Barristers' Society and as to the taxation of costs and as to remedies against solicitors.

Bills of Sale.—No. 28 requires all bills of sale of personal chattels, or a true copy thereof, to be registered in the Deeds Registry. If the bill of sale is to secure the grantee repayment of advances or against loss from the endorsement of bills or promissory notes, or by reason of liability incurred or agreed to be incurred for the grantor, the circumstances must be stated in the bill and also in an affidavit which is required to accompany it, which affidavit must also state that the bill of sale was executed in good faith. In any other case the bill of sale must be accompanied by an affidavit stating that the consideration money is justly due and that the bill of sale is made in good faith. Bills of sale may be renewed from time to time by filing a renewal statement and an affidavit, and if not so renewed become invalid against creditors of the grantors and subsequent purchasers. Hirings, leases, or bargains for the sale of chattels accompanied by delivery if the property or a lien remains with the person letting or selling is required to be in writing, and to be accompanied by an affidavit, both of which must be filed in the Deeds Registry.

Mechanics' Lien.—No. 29 gives to any person who performs any work or service upon, or furnishes materials for, any erection, building, road, railway, wharf, pier, bridge, mine, etc., for an owner or contractor a lien thereon for the price of such work, services, or materials. The liens created by the Act have priority over judgments, executions, attachments, etc., and, after registration, over conveyances and mortgages.

Fire Insurance.—No. 30 creates a number of statutory conditions which become part of every contract of fire insurance, unless stipulations to the contrary are inserted in conspicuous type in the policy. The conditions include two provisions: that the policy is to be void in respect of buildings or goods wrongly described by the insured and that any change material to the risk and known to the insured is to avoid the policy unless promptly made known to the insurer.

Medical Men.—No. 32 amends and consolidates the law relating to medical practitioners and the practice of medicine. It provides for the continuation of the provincial Medical Board and the filling of vacancies. The duties of the Board are to regulate the study of medicine, appoint

examiners, examine the credentials of applicants for registration, and to keep the Medical Register. The duties of the Registrar and the Board of Examiners are defined. Registered practitioners are empowered to sue for their fees, and various penalties are imposed for offences against the law.

Sureties for Officials.—No. 33 provides for the acceptance of the bonds or policies of guarantee companies as security for the performance of his duty by any public officer or any official or servant of a benevolent, building, or insurance society or municipal corporation, or where such security is required to be taken by a judge.

Probate Courts.—Nos. 35 to 37 amend certain provisions of No. 2 of the Acts of 1897 and No. 100 Revised Statutes, 5th Series, relating to the Probate Courts.

Judicature.—Nos. 39 and 40 make small amendments to the Nova Scotia Judicature Act, 1884, and the amending Act, No. 36 of the Acts of 1897.

County Courts.—No. 41 amends No. 9 of the Acts of 1889 as to County Courts.

Towns Incorporation.—Nos. 42 to 44 make certain amendments in the Towns Incorporation Act, 1895.

County Incorporation.—No. 45 amends the County Incorporation Act, No. 3 of the Acts of 1895.

Infants.—No. 46 amends No. 11 of the Acts of 1893 by enabling an order relating to the custody of infants to be reviewed at any time.

Miners.—No. 54 provides for the payment of miners' wages in Canadian currency, and makes certain provisions for the payment or retention of their debts out of such wages.

Expenses.—No. 55 provides for certain expenses of the civil government of the province.

Minor Acts:—

Provincial Loans.—No. 2 amends No. 7 of the Acts of 1898, entitled "An Act Respecting a Provincial Loan."

Constables.—No. 10 provides for the appointment of provincial constables.

Bridges and Highways.—No. 13 makes certain provisions for the construction of bridges and repair of highways in West Hants.

No. 14 makes an appropriation to the County of Kings for the construction of bridges.

Sewers and Marsh Lands.—No. 20 amends No. 29 of the Acts of 1898 relating to sewers and marsh lands.

Executors and Administrators.—No. 38 amends No. 48 of the Acts of 1886 relating to executors and administrators.

Jury Panels.—No. 47 legalises and confirms jury panels, assessment rolls, and revisers' lists for the year 1899.

Roads.—No. 48 amends No. 45 of the Revised Statutes as to the laying out of roads other than great roads.

Public Instruction.—Nos. 50 and 51 amend No. 1 of the Acts of 1895 relating to public instruction.

Annuity.—No. 52 provides for the grant of a certain annuity.

Preferences by Insolvents.—No. 53 makes various amendments in No. 11 of the Acts of 1898 as to assignments and preferences by insolvents.

No. 6 amends No. 6 of the Acts of 1886.

No. 8 amends No. 3 of the Acts of 1894.

No. 9 amends No. 6 of the Acts of 1898.

No. 11 amends No. 13 of the Revised Statutes, 5th Series.

No. 12 amends No. 7 of the Acts of 1891.

No. 16 amends No. 86 of the Revised Statutes.

No. 18 amends No. 84 of the Revised Statutes.

No. 21 amends No. 25 of the Acts of 1898.

No. 22 amends No. 36 of the Acts of 1895.

No. 23 amends the last-mentioned Act (No. 22).

No. 24 amends No. 27 of the Acts of 1879.

No. 31 amends No. 30 of the present year's Acts.

No. 34 amends No. 52 of the Acts of 1892.

No. 49 amends No. 47 of the Acts of 1898.

5. MANITOBA.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—60.

Anatomy (No. 1).—The Manitoba Anatomy Act provides for the supply to medical schools of bodies for the purpose of dissection.

Bake-shops (No. 2).—This Act amends the law on this subject by limiting the time a person may be employed in a bake-shop to twelve hours in any one day, or not more than sixty hours in any one week.

Free Libraries (No. 14).—The Free Libraries Act provides that when at an annual municipal election the assent of three-fifths of all resident qualified electors is obtained, a free library may be established within that district. The library shall be managed by a board of five members consisting of the mayor or reeve, a councillor, a public school teacher, and two resident electors.

Stable-Keepers (No. 18).—This Act gives the right of detention of livery stable-keepers priority over all existing liens affecting any animal detained in his stable.

Infant Children (No. 21).—The Maternity Acts render it unlawful for any person, except at a registered house, to receive for hire for the purpose

[1] The Session 62 Vict. began on March 9th, 1899, and ended July 21st. Of the Acts passed, 44 were public and 16 private. Of the public Acts, 4 would in the United Kingdom be treated as private.

of nursing for a longer period than forty-eight hours more than one infant, or a set of twins, under the age of one year. This Act also provides for the registration and inspection of houses for the reception of infants and maternity boarding-houses. Persons registered under this Act must keep a record of all persons received into their house. Managers of maternity hospitals, infants' homes, or other refuges for women must ascertain and record the antecedents of women coming under their care. All registered houses are under the supervision of the Medical Health Officer and the Superintendent of Neglected Children appointed under the Childrens' Protection Act of Manitoba.

Electric Lighting and Telephones (No. 25).—This Act amends the Municipal Act by enabling a town having a thousand inhabitants or upwards to construct or purchase and operate electric light works or telephone lines. Ample provisions are contained in the Act to carry it into effect.

Supplies.—No. 41 provides a sum of $1,024,372·84 for defraying the expenses of the Government and public service for the year ending December 31st, 1899.

Companies (No. 43).—The Joint Stock Companies Winding Up Act provides the necessary machinery for winding up all incorporated companies which are subject to the legislative authority of this province. The company may be wound up either voluntarily or by order of the Court. The procedure to be employed is closely allied to that provided by the Imperial Statutes.

Wolves (No. 44).—This Act amends the Act respecting wolf bounty by making it unlawful to kill any wolf by means of poison.

6. PRINCE EDWARD ISLAND.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—34.

Fisheries.—No 4 empowers the Lieutenant-Governor in Council to grant from the Crown the bed of rivers, and lakes and foreshores, within the province. He may also grant fishery leases and licences over Crown property, or may set apart any waters for the artificial propagation of fish.

Education.—No. 7 amends the Public Schools Act, 1877, and, *inter alia*, empowers any truant officer for the city of Charlottetown to arrest any child between the age of eight and fourteen found loitering in the streets during school hours.

Cattle.—No. 9 requires that all cattle on their importation be accompanied by a certificate showing that they are free from tuberculosis, and on failure of the production of such certificate they must be submitted to

[1] The Session 62 Vict. commenced on April 17th, 1899. Of the Acts passed, 17 would in the United Kingdom be considered as local or private Acts.

one week's quarantine. If found to be infected, they must be destroyed or otherwise disposed of.

Dower.—No 13 enables a wife to have dower in her husband's equitable estates, and in lands in respect of which her husband at the time of his death was entitled to a right of entry or action. The husband can, with the consent of a judge of the Supreme Court, bar the right to dower when the wife is a lunatic, provided he secures a sum equal to the value of the dower for the wife's benefit.

Official Reporters.—No. 15 provides for the attendance of official shorthand writers at the Courts of Law, and enacts that in certain cases their reports shall be admissible in evidence.

Taxation.—No. 20 imposes a tax of twenty dollars per annum on every commercial traveller not permanently residing in the province who travels in goods other than liquor. Commercial travellers who sell or canvass for orders for liquor require an annual licence costing two hundred dollars. Every liquor-seller has to be registered, and can only be licensed for one place.

7. NEWFOUNDLAND.

[*Contributed by* L. S. BRISTOWE, ESQ.]

Acts passed—38.

Marine Court of Enquiry.—No. 1 gives power to a Marine Court of Enquiry, appointed under No. 116 of the Consolidated Statutes, 2nd Series, to enquire into the conduct of a master or other person in charge of a ship who fails to render assistance or otherwise conform to the provisions of s. 422 of the Merchant Shipping Act, 1894, in cases of collision; and in certain events to cancel or suspend the certificate of the master, mate, or engineer.

Sale of Goods.—No. 2 codifies the law relating to the sale of goods. The Act is divided into six parts. Part i. deals with the formation of the contracts, including provisions as to the formalities and subject-matter of the contracts, conditions, and warranties, and sale by sample. Part ii. relates to the effects of the contract, including the transfer of property and the transfer of title. Part iii. deals with the performance of the contract, and part iv. with the rights of an unpaid seller against the goods, including vendor's lien and stoppage *in transitu* and re-sale. Part v. prescribes the remedies of seller and buyer for breach of the contract. Part vi. contains various supplementary provisions, including provisions as to sales by auction.

Lodgers' Goods Protection.—No. 4 is an Act to protect the goods of lodgers against distresses for rent due to the superior landlord. It is substantially the same as the Imperial Lodgers' Goods Protection Act, 1871.

Crown Lands.—No. 5 provides for the surveying of lands thereafter applied for for any purpose, and for payment within a year of fees payable to the Crown in respect thereof. It amends No. 13 of the Consolidated Statutes (2nd Series) of Crown Lands, Timber, Mines, and Minerals, and contains new provisions as to licences to cut timber on ungranted Crown lands in substitution for s. 59 of that Act. It also contains a series of new provisions as to the grant of mining leases from the Crown in substitution for s. 63 of the same Act, as amended by 60 Vict., No. 4, and a number of other alterations of details in the same Act.

Cash Notes.—No. 6 authorises the issue of cash notes to be applied by the various road boards in payment for labour, materials, and other obligations. The notes are made legal tender, and are payable on presentation at the office of the Department of Public Works at St. Johns.

Companies.—No. 10 is a long Act of 243 sections, dealing with the whole law of the formation and winding up of joint stock companies. It incorporates the following Imperial Statutes—namely, the Companies Acts, 1862, 1867, 1877, 1880, and 1898, the Joint Stock Companies' Arrangement Act, 1870, the Preferential Payments in Bankruptcy Acts, 1888 and 1897 (so far as relates to companies), the Companies Winding Up Act, 1890, the Companies (Memorandum of Association) Act, 1890, and the Directors' Liability Act, 1890. There are a few variations, including a provision that the memorandum of association shall only require to be signed by three persons.

Extradition.—No. 11 makes provisions for the extradition of fugitive criminals in cases to which the Imperial Extradition Acts, 1870 and 1873, apply.

Accidents.—No. 12 requires notice of accidents in making, working, or repairing railways, gasworks, electric works, canals, bridges, harbours, factories, mines, scaffolding for buildings, or in the working of traction or other engines in the open air, to be given by the employer to a stipendiary magistrate, who must report it to the Minister of Justice. The Minister of Justice may order an investigation to be made into the accident, if it involves loss of life or bodily injury.

Judicature.—No. 23 makes provision as to the making and publication of rules of Court.

Boiler Inspection.—No. 14 provides for the appointment of an inspector to inspect and report on marine, factory, foundry, locomotive, and other boilers, the inspector being placed under the control of the Minister of Marine and Fisheries. The Governor in Council is authorised to make regulations as to the inspection of boilers, and the inspectors are given large powers of entry. If on inspection a boiler is found in good condition, a certificate to that effect, extending over a limited period, is given. When a boiler is found to be defective, it is condemned, or repairs ordered, and penalties are imposed for using a boiler condemned or ordered to be repaired, or after the expiration or cancellation of the certificate.

Barristers and Solicitors.—No. 16 amends No. 54 of the Consolidated Statutes (2nd Series) relating to the Law Society, barristers, and solicitors by providing for the suspension, by the Law Society, of barristers and solicitors guilty of unprofessional conduct, a right of appeal being given to the Supreme Court. The Act makes divers other alterations of detail.

Sealers.—No. 17 provides that a sealer shall not be liable for goods or cash advanced to him to be paid for out of the proceeds of a sealing voyage to any greater amount than his share of the proceeds of the voyage.

Deer.—No. 18 prohibits the hunting or killing of moose or elk before June 1, 1906. It also provides a close season for caribou, and makes a licence necessary for killing more than three stag and one doe caribou.

Light Dues.—No. 19 provides for dues to be paid by vessels entering ports of the Colony, other than sealing, coasting, or fishing vessels owned and registered in the Colony.

Advances for Public Works, etc.—No. 20 enables the Governor in Council to authorise relieving officers, chairmen of local boards, etc., to make advances out of public moneys against an agreement to give work or service or materials. Persons neglecting to give such work, service, or materials are liable to prosecution.

Education.—No. 24 amends the Education Act, 1895, by appointing assistant superintendents, making an additional appropriation for school inspection, and as to boards of education in Church of England, Roman Catholic, and Methodist districts.

Lost Debentures.—No. 26 enables the Governor in Council to pay debentures lost or destroyed within the meaning of 58 Vict., No. 4, where such debentures have matured or become payable or been called in for payment.

Agriculture.—No. 33 authorises the raising of $100,000 to be expended in bonuses for clearing and cultivating land.

Audits.—No. 34 consolidates into one Consolidated Revenue Fund all public moneys and revenue over which the Colonial Legislature has the power of appropriation, and makes provision for the appropriation of such revenue to the various departments of the public service of the Colony. It also provides for the way in which loans authorised by the Legislature shall be raised, and enables temporary loans to be raised, and provides for the division of the Colony into districts for revenue purposes. It also provides for the appointment of a Comptroller and Auditor-General for the audits of departmental accounts.

Public Loan.—No. 37 authorises a loan of $146,000 for the public service of the Colony, to be appropriated to lighthouses, fog alarms, beacons, public wharves, etc.

Appropriation.—No. 38 makes an appropriation out of the Consolidated Revenue Fund for the different departments of the public service.

Minor Acts:—

Elections.— No. 8 amends the Election Law by providing that (with certain exceptions) no public officer is to be employed in connection with an election.

Registration of Births, Marriages, and Deaths.—No. 9 amends the law relating to the registration of births, marriages, and deaths by enabling the Governor in Council to appoint a registering officer where there has been default in making or perfecting such appointment, and in some other particulars.

Local Affairs.—No. 15 makes certain amendments in 61 Vict., No. 3, relating to the administration of local affairs.

Water.—No. 21 amends the Acts relating to the Harbor Grace Water Company.

Intoxicating Liquors.—No. 22 provides a licensing board for the sale of intoxicating liquors at St. Johns.

No. 23 relates to the municipal affairs of St. Johns.

No. 25 amends the law relating to trial by jury.

Game.—No. 27 amends the law relating to the preservation of game.

Customs.—No. 28 makes certain amendments in the Customs Act, 1898.

Pensions.—No. 32 grants certain retiring allowances.

Coinage.—No. 35 authorises the coinage of $100,000 in silver.

Revenue.—No. 36 amends the Revenue Acts, 1898, as to the rates of duty in various cases.

No. 3 amends No. 4 of the Consolidated Statutes.

No. 7 amends No. 110 of the Consolidated Statutes.

No. 29 amends 58 Vict., No. 4.

No. 30 amends 60 Vict., No. 20.

No. 31 amends 61 Vict., No. 8.

8. PROVINCE OF ONTARIO.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—38.

Executions and Sheriffs (No. 7).—This amends the law on these subjects in various particulars. Among other things it empowers a sheriff to seize and sell any equitable right or interest in any goods or chattels, including leasehold interests.

Revenue (No. 8).—By way of increasing the revenues of the Crown this Act imposes a tax, varying slightly in amount, on banks, insurance companies, loan, trust, railway, telegraph, gas, electric, and other companies *ejusdem generis*.

Succession Duty (No. 9).—The most important point in this Act is the definition of property liable to duty. It is to include any property of which

a person was at the time of his death competent to dispose—*e.g.*, property appointable under a general or limited power.

Mines (No. 10).—A right is given by this Act to stake out locations in unsurveyed territory on taking up a licence, and provision is made for the grant of mining leases.

Statute Law Amendment (No. 11).—A large number of miscellaneous amendments are comprised in this Act—forms of oaths, non-suits, empannelling grand jurors, forest reserves, arbitrators, etc.

Surety Companies (No. 12).—The guarantee company is a product—and a convenient one—of modern business life. The present Act authorises the Lieutenant-Governor in Council to direct that the bond of any such surety company named in the Order in Council—*i.e.*, a company empowered to grant bonds by way of indemnity—may be given as security in all cases where security for costs is ordered to be given.

Seduction (No. 13).—An unmarried girl who has been seduced may have no parents to bring an action to redress the wrong. In such a case the legal guardian at the date of the child's birth may maintain the action, though the girl is out at service.

Trustees (No. 15).—This Act is on the lines of the English Judicial Trustees Act, 1896, and enables the Court, where a trustee is technically liable for a breach of trust, to relieve him from the consequences if he "has acted honestly and reasonably and ought fairly to be excused."

Registration of Deeds (No. 16).—This amends the Registry Act (Rev. Stat. No. 136) in various particulars.

Wages (No. 17).—By No. 156 of the Revised Statutes priority is given to wages on the distribution of an estate. This Act provides for such wages being paid within a month of the estate coming under the control of the executor or liquidator.

Workmen's Compensation (No. 18).—The Ontario Workmen's Compensation Act (Rev. Stat. No. 160) is on the lines of the English Employers' Liability Act, 1880. The present Act amends it in several particulars, and chiefly by providing a scheme for settling claims by arbitration, the judge of the county court to act as arbitrator.

Cheese and Butter Exchanges (No. 20).—Facilities are afforded by this Act for any five or more persons engaged in the manufacture of cheese or butter obtaining incorporation as an "Exchange" for the above articles, and regulating by rules the mode of conducting sales, inspection, weighing and shipment, etc., and the settlement of disputes by arbitration.

Loan Corporations (No. 22).—Any loan corporation doing business in the province is by this Act required on demand to satisfy the Registrar of the legality and regularity of any bye-laws passed by it, failing which the corporation may be struck off the Register.

Municipalities (No. 26).—This amends the Municipal Act (Rev. Stat. No. 223) in a number of particulars: voting, qualifications, oaths, quashing

of bye-laws, explosives, gas, electricity, water, street railways, ferries, cattle-running, billiard-rooms, and other variegated objects of municipal life.

Assessment of Property (No. 27).—Taxes may by this Act—amending the principal Act (Rev. Stat. No. 224)—be ordered by a municipal council to be paid into the office of the treasurer or collector by a named day and discount allowed for punctual payment. The property subject to distress for non-payment is defined.

Public Libraries (No. 29).—A municipal corporation may issue debentures for the above purpose. Any person interested in any contract with the corporation, or expectant of compensation from it, is disqualified from acting as a member of the board of management.

Tree Planting (No. 30).—The Ontario Tree Planting Act (Rev. Stat. No. 243) provides for the council of a municipality paying a bonus or premium for every tree planted within the municipality on any highway or the boundary line of farms. The present Act provides for the appointment and payment of an inspector of trees. There seems a hint here for our municipal authorities.

Brewers and Distillers' Licences (No. 31).—Brewers and distillers are not to sell any spirituous or fermented liquors unless they have taken out a provincial licence, which is to be an authority to sell to persons who are holders of licences under the Liquor Licence Act. The fee for the provincial license is graduated according to the amount invested in the business. A scale of fees, graduated according to the population of the place, is also fixed for taverns and shop licences under the Liquor Licence Act (Rev. Stat. No. 245).

Game (No. 33).—Hunters are to carry their licences on their person. The sale of game during the close season, or its possession is prohibited, but a licence for cold storage may be obtained.

Fisheries (No. 34).—This amends the Ontario Fisheries Act (Rev. Stat. No. 285) in a number of particulars. No salmon trout or lake trout weighing less than two pounds is to be exposed for sale. Nets are not to be used for catching minnows in streams inhabited by speckled trout. A licensee must allow inspection of fish taken.

San Jose Scale (No. 35).—Orchards or plants in any nursery found by an inspector to be infected with this disease may be destroyed. Plants before removal from a nursery must be fumigated.

Schools (No. 36).—This empowers the school corporation of any municipality where there is no high school to establish "continuation classes," and amends the law under the Public Schools Act (Rev. Stat. No. 292).

9. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—55.

Licensing (No. 19).—The elaborate provisions of the Revised Statutes with respect to the Quebec Licence Law are amended in several particulars: thus, in the case of clubs, a person to be a *bonâ-fide* member of a club must have been duly elected by ballot after his name has been posted up in the club for at least eight days previous to the balloting, and he must have paid the entrance and other fees. Further penalties are enacted against unlicensed vendors of intoxicating liquors.

Public Lands (No. 20).—Under this amending Act the registration of a transfer of land is not to have the effect of exempting the transferree from fulfilling all conditions of sale to which the original acquirer was bound.

Forest Fires (No. 22).—This empowers the Commissioner of Forests where there has been a prolonged drought to prohibit the setting of fires for the purpose of clearing lands during the drought.

Fishery (No. 23).—By this Act line fishing and rod and line fishing are alone permitted in navigable waters, and rod and line fishing only is permitted in the non-navigable waters of the province; for any other mode of fishing a licence must be obtained.

Persons having their domicile in the province do not require licences to angle in the waters of the province which are not under lease, otherwise in the case of persons not having their domicile in the province. The licence-fee is never to be less than ten dollars.

Fishing leases may be granted by the Commissioner of Lands, Forests, and Fisheries. Such leases may be revoked for excessive fishing or fishing during prohibited seasons. Special provisions are inserted as to salmon fisheries, oyster-beds, and shell-fish.

Game Laws (No. 24).—For the purposes of this Act the province is divided into two zones.

A close time is fixed for deer, moose, and caribou, and the use of dogs in hunting, except for red deer, is prohibited. No person is in one hunting season to kill more than two moose, three deer, and two caribou. A close season is also fixed for beavers, otters, foxes, racoons, hares, and musk-rats, for woodcock and widgeon, swallows, king-birds, warblers, finches, robins, and other birds.

Snares or traps of any kind are forbidden; also the use of firearms over a certain calibre, and strychnine or other deleterious substance. A Game Superintendent is to be appointed. No person not domiciled in the Province of Quebec can hunt unless he holds a licence. Hunting territories may be set apart.

Education (No. 28).—This is an Act in nine titles (120 pp.) dealing comprehensively with the whole machinery of public education—the Department of Public Instruction and Staff (tit. 1), School Municipalities and Districts and Dissentients (tit. 2), School Taxes (tit. 3), Public School Fund (tit. 4), Normal Schools, Fabrique Schools, and County Academies (tit. 5), Prosecutions and Penalties (tit. 6), Pensions of Officers (tit. 7), Drawing, Hygiene and Agriculture, School Libraries and Books (tit. 8), and Repeals (tit. 9). It is worthy of remark that drawing, hygiene, and agriculture are to be taught in *all* schools.

Police (No. 31).—This Act provides for the constitution and organisation of a police force. The rules as to uniform, arms, training, and discipline are to be prescribed by the Attorney-General. The pay of a first-class constable is not to exceed $450 yearly. Special provisions are inserted for cases of urgency—*e.g.*, for drafting constables to any place to quell disturbances.

Benefit and Charitable Associations (No. 32).—Under this Act, if twenty persons sign a declaration setting forth certain particulars, the name of the proposed association, its purpose, directors, and the place of its head office, the Lieutenant-Governor in Council may, on petition, authorise the formation of the signatories into a mutual benefit or charitable association, with a common seal and perpetual succession, and a power to contract and to sue and be sued.

The association is to be managed by directors elected by the members and may require security to be given by its officers. The benefits in favour of members, or the widows, heirs, and assigns of such members, are not liable to seizure for the debts of such member or for those of the parties benefited. The maximum of contributory aid is limited. Every association is subject to inspection by the Government Inspector of Mutual Benevolent Associations, who is to examine and report.

Pharmacy (No. 35).—By this Act certain substances are scheduled as poisons, and power is given to the Council of the Pharmaceutical Association of the province to declare from time to time other substances poisons. Patent or proprietary medicines are not to be interfered with, but if there is reason to apprehend that such medicines contain any of the scheduled poisons in such quantity as renders the use of the medicine in the prescribed doses dangerous to health or life, it may, on being analysed and found dangerous, be treated as a poison.

Dentists (No. 36).—The instructions and examinations of dental students and the disqualification of practitioners for certain offences are the matters dealt with by this subject.

Municipal Corporations and Bounties (No. 41).—Under this Act no municipality is to grant a bonus to any manufacturer who proposes to establish within its limits an industry of a similar nature to one already established in such municipality without having received a bonus.

Insurance Companies (No. 44).—This is an illustration of the growing watchfulness exercised over immigrant corporations. All life and fire insurance companies not licensed under the Statutes of the Dominion and doing business in the Province of Quebec are subjected to inspection by the Inspector of Insurance. They are also required by the next Act (No. 45) to prepare annually and deposit at the Treasury Department a statement, in a prescribed form, of the condition and affairs of such company at the usual balancing day.

Immigrant Children (No. 47).—The deportation of children to Canada by philanthropic societies has become so common of late as to call for State regulation. Every society is by this Act, before placing children in the province, to lay before the Lieutenant-Governor its object and method of work, and the Lieutenant-Governor may then grant the society a certificate authorising it to place children in the province.

Every society is to register the name of its agent, to provide a permanent home in the province to which children may be returned, and keep a record of particulars about such children. The society's agent must visit each child once a year.

Any society placing any child of known vicious tendencies, or who has been an inmate of a reformatory, is to be liable to a fine, or may have its certificate revoked.

Conciliation (No. 54).—This is a class of legislation not uncommon on the Continent. The preamble of the Act recites that it is desirable to diminish the number of law suits which may arise in country places, and with this end in view it provides that in matters purely personal, affecting movables, and where the amount claimed does not exceed twenty-five dollars, no demand, with certain exceptions, is to be received unless the defendant has previously been summoned in conciliation before one of the conciliators appointed by the Act. These conciliators are residents of the locality selected by the local council. Priests, Roman Catholic *curés*, justices of the peace, and the mayor of the municipality are also *de jure* conciliators. If the defendant fails to appear when summoned, he is liable for all the costs of the suit. If the conciliator gets the parties to agree, he is to draw up a minute of the agreement to be signed by each party. All declarations before the conciliator are privileged.

10. NORTH WEST TERRITORIES.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

Ordinances (for 1900) passed—45.

Debtors.—No. 11 provides that no assignment for the general benefit of creditors can be valid unless made to some person residing in the judicial district within which the assignor resides or carries on business.

Employers' Liability.—No. 13 amends the Workmen's Compensation Ordinance by enacting that the negligence of a fellow-workman cannot be pleaded as a good defence in any action brought against an employer.

Insurance (No. 20).—The Mutual Hail Insurance Ordinance empowers the Lieutenant-Governor in Council to grant charters to companies formed in accordance with the provisions of this Ordinance for the purpose of mutual insurance against damage by hail, tornadoes, cyclones, and hurricanes. The Ordinance provides for the general management and supervision of the chartered companies.

Canadian Troops (No. 24).—This is a similar enactment to New Brunswick No. 11, *ante*, p. 605.

Villages.—No. 25 empowers the Commissioner of Public Works, when satisfied that any portion of the Territories comprising an area not greater than 640 acres (no part of which is within the municipalities) contains not less than fifteen dwelling-houses, to give notice that it is proposed to establish each place as a village, and after thirty days the Lieutenant-Governor may by Order in Council declare such place a village and fix a day for the election of an overseer. The Ordinance further provides for the election of the overseer, meetings of ratepayers, assessment and taxation, the prevention of disease, and fire. The overseer's remuneration is not to exceed a hundred dollars and two and a half per cent. of all taxes collected by him.

IX. WEST INDIES.

1. THE BAHAMAS.[2]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed—33.

Infants' Property (No. 4).—This Act empowers the Chief Justice upon petition to the court on behalf of any infant or any persons jointly interested with the infant to decree the sale of any lands of which the infant may be

[1] The Session commenced on March 29th, and closed on May 4th, 1900. Of the Ordinances passed in this Session, 13 would be treated in the United Kingdom as private Acts.

[2] The Session 62 Vict. commenced in December, 1898, and ended in May, 1899. Acts are passed by the Governor and the Legislative Council and Assembly of the Colony.

seized or possessed, and by order of the court to vest the same in the purchaser and invest the purchase money in a trustee for the benefit of the infant, and give directions as to payment of the dividends; and such order is to have the same effect as if the infant had been twenty-one years of age, and had duly conveyed the said land.

Pilotage (No. 5).—This Act amends the Pilotage Laws of the Colony.

Savings Bank (No. 7).—This Act supplements the Post Office Savings Bank Act of 1885 and the Amendment Act of 1886 by empowering the Governor in Council to authorise the district postmasters to receive deposits for remittance to the Postmaster of the Colony. All deposits are to be entered and attested by the Postmaster or district postmaster in the depositor's book, as and when received. No deposit may be of less amount than one shilling, nor of any sum not a multiple thereof. Within seven days at the head post-office, or two months at a district office, after demand by the depositor, he is to be entitled to repayment out of the public revenue. The receipt of a minor above the age of seven and under the age of sixteen is to be a full discharge for any repayment, and so likewise the receipt of the father or mother of a depositor under seven. Depositors over sixteen may withdraw at any time, and may by writing nominate any person not being an officer of the post-office to receive any deposit under £30 upon the depositor's decease and proof thereof, and the deposits of illegitimate persons may on death be paid to such persons as would have been entitled if the depositor had been legitimate, or, failing such persons, as the Governor in Council may direct. The deposits of intestates not exceeding £30 may be paid without letters of administration to the persons entitled by law to receive the same. Deposits in the names of a trustee and beneficiary are to be paid on the receipt of both, or the survivor, or the executors or administrators of the survivor. All disputes as to a deposit are to be decided by the Attorney-General, and his award shall be final and conclusive on all parties. Friendly and other societies may make deposits subject to the special provisions in the Act. The deposits in the savings bank are to be, as far as practicable, invested in England in such securities as may be approved of by the Secretary of State for the Colonies, or in such other mode of investment as the Governor in Council may approve.

The securities may be sold in order to provide the repayment of the deposits, and any deficiency is to be defrayed out of the public revenue. Interest is to be paid on deposits of £1 or any multiple thereof, at two and a half per cent. per annum, to be calculated from the first day of the next calendar month after the deposit, and be added to the principal on December 31st in each year, except on accounts closed before that day, when interest is to be calculated to the last day of the month preceding the date of the closure, and be paid with the principal. Annual statements of the accounts of the savings bank are to be laid before the legislative bodies before March 31st in each year. The Governor in Council is to make rules

for the management of the savings bank, and such rules must limit deposits to £200 in all and to £40 annually.

Postal Service (No. 8).—The Inter-colonial Mails Act, 1899, establishes a public mail service by empowering the Governor in Council to hire vessels for the carriage of the mails between Nassau and certain islands in the Colony.

Interpretation Act (No. 13).—This Act declares every Act then in force and thereafter passed to be a public Act, unless the contrary be declared in the Act.

Education (No. 17).—The Vesting of Lands Education Act, 1899, vests all lands and hereditaments acquired for public educational purposes in the Board of Education, and empowers the Board to purchase lands for educational purposes; and on purchases conveyances are to be made to the Board of Education, and on sales by the Board the signatures of two members of the Board are to be deemed a sufficient execution of the deed of conveyance.

Salary of Chief Justice (No. 18).—This Act fixes the salary of the Chief Justice of the Colony at £1000.

Friendly Societies (No. 19).—The Friendly Societies Amendment Act, 1899, is consolidated with the principal Act (10 Vict., No. 29), which it amends by giving additional powers to the official auditors—

(1) To require accounts to be adjusted in accordance with their direction;

(2) To order unauthorised expenditure to be refunded by the treasurer or principal officer of the society.

Imperial Acts to be in Force in the Colony (No. 20).—This Act declares the Arbitration (Imperial) Act, 1889, and the Trustee (Imperial) Act, 1893, to be in force in the Colony, and substitutes this latter Act for the Trustee (Imperial) Act, 1850, in all past Colonial Acts wherein the same is referred to.

Tariff (No. 23).—The Tariff Continuance Amended Act, 1899, imposes new duties on flour, lumber, oils, soap, sugar, tea, gunpowder, sailcloth, and rope, and exempts from duty all articles—farm tools, implements and machines—used exclusively for agricultural purposes.

Repeal of Acts (No. 26).—The Repealing Act, 1899, in view of the early compilation of the laws of the Colony, repeals the whole or parts of the Colonial Acts as declare certain Imperial Acts enumerated in Schedule A to be in force in the Colony, and the whole or parts of the Colonial Acts enumerated in Schedule B.

Statutes Consolidation (No. 27).—The Compilation of Laws Act, 1899, empowers the Governor to cause all laws in force in the Colony to be collected and reprinted.

Criminal Jurisdiction (No. 29).—This Act repeals No. 1 of this Session (62 Vict.) and amends the Magistrates Act, 1896, by varying the terms of imprisonment and amount of fines on conviction under the principal Act.

Street Nuisances (No. 31).—The Street Nuisance Prohibition Act, 1899, empowers the Governor in Council to make regulations prohibiting or restricting—

(*a*) The use of fireworks or explosives in public thoroughfares;

(*b*) The sounding of horns and trumpets, and any instruments of sound other than those used by a duly organised instrumental band;

and imposes penalties on conviction for breach of the regulations.

Intoxicating Liquors (No. 32).—The Liquor Act, 1899, regulates the issue of licences for the sale of intoxicating liquors, and provides for the establishment of local option in the several districts into which the Governor is empowered to divide the Colony for the purpose of the Act.

2. BARBADOS.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1899)—42.

Court of Appeal (No. 1).—The Assistant Court of Appeal (Amendment) Act 1898, amends and is consolidated with the Assistant Court of Appeal Act, 1891. The Act provides, *inter alia*, that in case of variation or reversal of the decision appealed from, the judgment of the Assistant Court of Appeal shall be substituted for the original decision, and the same shall be carried into effect by the police magistrate or judge of the Petty Debt Court whose decision has been appealed from. If an order on original adjudication for payment of money within a given time be confirmed on appeal, such time shall be completed from the date of the original order.

No. 2.—The Court of Appeal (Amendment) Act, 1898, amends and is consolidated with the Act for the Establishment of a Court of Appeal (No. 1 of 1857). The Act enables either plaintiff or defendant to appeal from any decree of the Chief Justice of Barbados, and makes the judgment pronounced by the Appeal Court binding on the parties and enforceable as if the same were the decree of the Court whence the appeal came.

Intestates' Estates (No. 3).—The Intestates' Estates Act, 1899, provides that where administration of the personal estate of an intestate is granted to a nominee of the Crown, the administration actions against the administrator shall be carried on as if such nominee were one of the next-of-kin of the deceased. All proceedings on the part of the Crown in respect of the personal estate of any deceased person are to be taken within the same time and subject to the same rules of law and equity as like proceedings by or against a subject. The law of escheat for a legal estate in corporeal hereditaments is to apply to the legal or equitable estate in incorporeal hereditaments and

[1] Acts are passed by the Governor, Council, and Assembly of Barbados, and are numbered consecutively for the calendar year commencing January 1st.

to the equitable estate in corporeal hereditaments of persons dying without an heir and intestate in respect of such estates. Power is given to the Court to sell any legal or equitable estates in corporeal or incorporeal hereditaments to which the Crown is entitled by escheat and pay the proceeds into the public treasury for disposal under s. 14 of the Barbados Escheat Act, 1891. Power is given to the Governor in Executive Committee to waive the rights of the Crown in escheats in favour of the person to whom, if the same had been found by inquisition, the Crown could grant such realty, and to such person convey the right so waived, subject to a saving of the rights of any person claiming such realty, and such waiver and conveyance is binding on the Crown as between the Crown and the grantee, his heirs, executors, administrators, and assigns, but not further or otherwise. Any beneficial interest in realty becoming, by circumstances or happening before or after the death of a person, ineffectually disposed of shall constitute an intestacy in respect thereof. The operation of the Act is suspended until such date as the Governor notifies by Proclamation that her Majesty has not disallowed the Act.

Mines Regulation (No. 9).—The Mines Regulation Act, 1899, makes rules and regulations for the working of all mines in order to safeguard the workmen, and imposes penalties on persons contravening the rules.

Anglican Church (No. 13).—The Anglican Church (Barbados) Amendment Act, 1899, provides a salary of £600 per annum for the next Bishop of the Anglican Church in Barbados and his successor. The operation of the Act is suspended until the date of a Proclamation by the Governor notifying that her Majesty has not disallowed the Act.

Hurricane Loan (No. 15).—The Hurricane Loan Act, 1899, authorises the Barbados Government to borrow £50,000 from the Imperial Government upon the security of the general revenues and assets of the Colony in priority over subsequent charges thereon. The amount of such loan is to be applied by the Governor in Executive Committee in loans to owners of plantations damaged by the hurricane of September 10th, 1898, in order to aid them in making good damages to buildings or injury to live stock occasioned by the hurricane. Such loans are to bear interest at three per cent. per annum, and be repayable by twenty equal annual instalments commencing at the expiration of the third year from the date of the loan. All moneys paid by the owners in respect of such advances are to be placed by the Government of Barbados to a special fund separate from the general revenue, for the purpose of repayment of the Imperial loan with the interest thereon. Certificates of loans to owners are to be executed in duplicate by such owners and the Governor in Executive Committee, and the amount of such loans shall rank as a specialty debt against the plantation and the growing crops and produce and live and dead stock thereon, and in priority to all estates, interests, judgments, and charges existing at date of loan or thereafter created, and shall be recoverable in the Court of Chancery

at the suit of the Attorney-General of the Colony, or by an execution to be issued by the Governor in accordance with the provisions of the Act.

Agricultural Loans (No. 19).—The Agricultural Aids (Amendment) Act, 1899, arises out of the Hurricane Loan Act, and provides that if the growing crops and produce on a plantation shall be taken in execution under the Hurricane Loan Act in derogation of any prior lien thereon in respect of an advance under the Agricultural Aids Act of 1887, the lender under this last Act shall, to the extent his charge against the crop has been defeated by payments under the Hurricane Loan Act, have a charge on the land of the borrower's plantation in priority to all other charges, except that of the Governor in Executive Committee under the Hurricane Loan Act.

Conveyancing Act (No. 22).—The Conveyancing (Amendment) Act, 1899, amends the principal Act (the Property and Conveyancing Act, 1891) in the case of a married woman restrained from anticipation by giving power to the Court of Chancery, where it appears to be for her benefit, by judgment or order, with her consent to bind her interest in any property.

Substituted Service on Absent Defendant (No. 23).—The Petty Debt (Amendment) Act, 1899, enables the judge upon affidavit of non-service to direct service of the plaint and summons against defendant to be effected within such time and in such manner as the Court may think fit.

Lunacy (No. 29).—The Lunatics (Amendment) Act, 1899, amends the Lunatics Act of 1890, and in the case of persons who, by lunacy or otherwise, become so furiously mad as to be dangerous if at large, empowers any police magistrate to issue a warrant for such person to be arrested and brought before the police magistrate and a justice of the peace, who, with the aid of two medical men, shall enquire as to the insanity of the person arrested, and upon the insanity of such person being certified by the two medical men, shall issue their warrant for his detention in the lunatic asylum.

Electric Light and Power (No. 36).—The Electric Light and Power Act, 1899, enables the Governor by a provisional order to grant to any local authority, company, or person the exclusive right to supply electricity for any public or private purpose within any area for such period as the Governor may think proper, subject to the provisions of the Act, which are set forth in thirty-two sections.

Whaling Regulations (No. 40).—The Whalers Act, 1899, declares the rules which are to govern the whale fishery and be observed by all whalers, and subjects all persons breaking the rules on summary conviction to a fine not exceeding £10.

NOTE.—Many short Amendment Acts have been passed: these would be more readily intelligible if the words of the Act under amendment in the sections amended were set out fully instead of being indicated by a bare reference to some particular words without their context.

3. BERMUDA.

[*Contributed by* THE HON. REGINALD GRAY, *Attorney-General.*]

Acts passed—36.[1]

The absurdity of the system of legislation which prevails in this Colony is amply demonstrated by the Session which commenced on May 31st, and the work of which was not nearly completed at the end of the year, when, after forty-six sittings, only thirty short Acts had been passed, of which *seventeen* were continuing Acts.

There are upwards of a hundred and fifty Acts on the Statute Book of limited duration, and these come up periodically for renewal, the usual periods for which they are continued varying from five to ten years. The avowed object of the House of Assembly in perpetuating this practice is that it enables that body to introduce into a continuing Act any amendment which it may consider desirable, and to place the Legislative Council in the position of being obliged either to accept the amendment or to let the principal Act or Acts expire, and also that it enables the House of Assembly alone practically to repeal an Act by refusing to continue it. Repeated efforts have been made to limit the affixing of duration clauses to Acts of an experimental nature, but without success.

Of the thirty-six Acts which were passed during 1899, some seem to be of more than local interest, and among these the following may be mentioned:—

Channels (No. 2).—The West End Channels Act, 1899, provides for the prevention of injury to the ship channels leading into Hamilton Harbour, which were deepened seven or eight years ago at a cost of £40,000, and also for the safety of ships using the same.

Index to Journals of Assembly (No. 3).—This Act makes provision for the preparation of a general index to these Journals for a period of fifty years from 1850 to 1899 inclusive.

Criminal Law (No. 4).—The Corporal Punishment Act, 1899, requires the Court to prescribe the number of strokes to be inflicted, which are not to exceed twenty-four, and the instrument to be used, and prohibits the carrying into execution of any such sentence without the previous consent of the Governor.

No. 5.—The Prisoners' Relief Act, 1899, enables the justices in quarter sessions of the peace to make regulations under which persons under sentence of imprisonment for two years and upwards may by industry and good conduct obtain a partial remission of their sentences.

Church (No. 6).—The Church Vestries Act, 1899, incorporates the rector and church vestry of each parish, with power to acquire by purchase

[1] This number includes six Acts which became law in January, having been passed in the Session of 1898-9.

or otherwise real property not exceeding the net yearly value of £300, and all personal property given or bequeathed for the promotion of Christian knowledge, or any other lawful religious, educational, charitable, or benevolent purpose or object within the parish. This is likely to prove a very useful measure, as it does away with the necessity of vesting property in ordinary trustees for such purposes.

Agriculture (No. 14).—The Bulbs Act, 1899, provides for the inspection and treatment of all imported bulbs with the view to preventing the importation of diseased stock. The growing and exportation of Easter lily bulbs and other bulbs of various kinds, which has been an important industry in Bermuda for several years, was being threatened by the introduction of diseased bulbs from abroad, and this protective measure was therefore adopted.

Post Office (No. 15).—This Act provides for the consolidation and amendment of the principal Act passed in 1879 and numerous amending Acts subsequently enacted, the work to be carried out by the Statute Law Consolidation Committee, with the assistance of a Post Office expert sent out from England.

Alien (No. 17).—This Act was passed to enable the alien executors of an American citizen naturalised in Bermuda, who under his will were empowered to sell his real estate, to sell and convey the same within five years after the commencement of the Act.

Survey (No. 18).—Under Acts passed in 1894 and 1897 a trigonometrical survey of Bermuda has been carried out by the Royal Engineer Department, and it was deemed advisable to render the map more complete by accurately defining on it the parochial boundaries. This Act was therefore passed authorising the Governor to appoint a Commission of three persons to examine, ascertain, and mark out the reputed boundaries, which thereupon were to be taken for all purposes, subject to the provisions of the Act, to be the true and correct boundaries.

Loan (No. 20).—This Act authorised the raising of £5,500 by the issue of local inscribed stock for the purpose of rebuilding portions of the causeway connecting the Island of St. George's with the mainland, which had been seriously damaged by a storm in September, 1899. The rate of interest was not to exceed four and a half per cent., and no stock was to be sold below par. The loan was issued at four per cent., and sold at an average premium of upwards of five per cent., the amounts tendered exceeding £20,000.

Liquor (No. 29).—This was an Act submitted by the Statute Law Consolidation Committee for the purpose of amending the Liquor Licence Acts preparatory to their consolidation. As the Statute Law Consolidation Act provides that consolidating Acts shall not be open to amendment in their passage through the Legislature, any desirable changes are embodied in an amending Act, the provisions of which are subsequently consolidated

with the other Acts on the same subject. It is found in practice that this system works well, and entirely prevents the mutilation of consolidating measures, which constantly happened under the former practice.

Registration (No. 36).—The Registration Act, 1899, consolidates the principal Act (1865, No. 4) and eight subsequent amending Acts dealing with registration of births, marriages, and deaths. In its present form it is a comprehensive measure, and so arranged as greatly to facilitate reference to the law on this subject.

4. BRITISH GUIANA.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1899)—24.

Bicycles (No. 2).—The Miscellaneous Licences Ordinance, 1861, Amended Ordinance, 1899, provides that with each annual licence issued by the Commissary of Taxation for keeping a bicycle or other cycle, a label shall be given to the licensee to be affixed to the cycle under a penalty for omission not exceeding forty-eight dollars.

Chemists' Registration (No. 3).—The Pharmacy and Poisons Ordinance, 1899, provides for the Registration of all chemists and druggists, and constitutes a Board of Examiners to conduct the examination of persons desirous of obtaining a certificate of competent skill, knowledge, and qualification for the purpose of being registered as a chemist and druggist under this Ordinance. The Board has power to issue certificates for registration under the Ordinance to the following persons without their examination :—

(*a*) All persons who at the commencement of the Ordinance are legally qualified to practise as druggists;

(*b*) All persons who have practised as druggists since April 1st, 1894, and whose competency so to practise is certified by two qualified medical practitioners of five years' standing;

(*c*) All persons on the list of dispensers in the Surgeon-Generals' office qualified by certificates and registration before the Medical Ordinance, 1886;

(*d*) All persons holding the chemist's, etc., certificates of the Medical Board;

(*e*) All persons entitled to practise in Great Britain as apothecaries, chemists or druggists, or pharmaceutical chemists.

Sale of Drugs and Poisons.—After October 1st, 1899, no person may keep a shop for the sale or dispensing of drugs and poisons unless registered under this Ordinance. The sale of poisons is subject to various restrictions;

[1] Ordinances are made by the Governor with the advice and consent of the Court of Policy, and public and private Ordinances are numbered together with reference to the calendar year.

and provisions are made for the inspection of chemists' shops, and the seizure of stale and unwholesome drugs.

Customs Duties (No. 4).—The Customs Duties Ordinance, 1899, levies specific and *ad valorem* duties on goods imported into the Colony, and provides for the payment of drawbacks of duty on the export of goods.

Taxation (No. 5).—The Tax Ordinance, 1899, imposes an acreage tax, tonnage duties, rum and spirit duties, stamp duties, licence duties, and storage rents on goods in Government bonded warehouses. The Ordinance remains in force for one year from April 1st, 1899.

Pilotage (No. 11).—The Lighthouse and Pilotage Ordinance, 1899, constitutes and incorporates one lighthouse and pilotage authority for the Colony consisting of not less than twelve or more than twenty persons appointed by the Governor in Council, such incorporated body to be styled "The British Guiana Lighthouse and Pilotage Authority." The Ordinance gives power to the corporation to make various regulations as to pilots, lighthouses, pilotage dues, etc.

Electric Works and Tramways (No. 13).—This Ordinance incorporates certain persons as "The Demerara Electric Company, Limited," and the objects of the company, are pursuant to orders they may apply for and obtain under the Electric Lighting Ordinance of 1890, to construct electrical works and tramways in British Guiana.

Railways (No. 16).—The Demerara Railways Amendment Ordinance, 1899, amends the Demerara Extension Railway Ordinance, 1896, Amendment Ordinance, 1897 (No. 10 of 1897), by extending the time for completion for six calendar months until January 22nd, 1900, and making certain variations in the contract between the Government of the Colony and the Demerara Railway Company, confirmed by Ordinance No. 8 of 1896. Provisions are made for the protection of the property of the Demerara Railway Company from being taken in execution or sold, and of its rolling stock on works in occupation of tenants from distress for rent, if such rolling stock bear a brand or mark indicating the ownership of the Company. Station-masters and engine-drivers are exempted from serving on juries.

Electric Lighting (No. 18).—The Electric Lighting Ordinance, 1890, Amendment Ordinance, 1899, empowers the Governor in Council by order to give an exclusive right to any local authority, company, or person to supply electricity for public or private purposes within any defined area for a period not less than twenty and not exceeding thirty years. Various provisions are made for the grant of an extension of the time fixed by the order or for the purchase of the undertaking by the Government, and for opening and breaking up roads and streets for the purpose of construction or repairs.

Tramways (No. 19).—The Tramways Ordinance, 1899, empowers the Governor in Council to grant licences authorising the licensees within a defined area to construct and work lines of tramways pursuant to the various provisions contained in the Ordinance. Power to purchase the tramways on

the expiration of the period fixed by the licence is given to the Government of the Colony and to the local authorities within whose jurisdiction the area of the tramways is situate.

Clergy Maintenance (No. 20).—The Clergy List Ordinance, 1899, grants to the Crown for three years certain annual sums set out in the schedule for the maintenance of the ministers of the Christian religion in the Colony, subject to certain provisions in the Ordinance as to the performance of the duties of their office by the ministers.

5. BRITISH HONDURAS.

[*Contributed by* H. L. ORMSBY, ESQ.]

Ordinances passed—25.

Fire Inquests.—Ordinance No. 3 of 1899 repeals s. 8 of Ordinance No. 1 of 1898, and provides for the payment of witnesses.

Fees—Solicitor.—Ordinance No. 4 of 1899 repeals scales of court fees, solicitors' costs, witnesses' expenses, and other scales of fees, and provides for scales being fixed by statutory rules.

Crown Lands.—The Crown Lands Vindication Ordinance (No. 5 of 1899) deals with procedure, etc., in cases of lands to which it appears uncertain whether any title but that of the Crown exists.

Wills.—Ordinance No. 6 of 1899 repeals ss. 10 and 11 of No. 107 of the Consolidated Laws, and makes new provisions as to proof of wills for recording.

Deeds.—S. 2 provides procedure for cancellation of record of any deed at the instance of persons injuriously affected.

Pounds.—The Pounds Ordinance, 1899 (No. 7 of 1899), regulates public pounds, and places them under the control of the district boards.

District Courts.—The District Courts Ordinance, 1899 (No. 11 of 1899), deals with the constitution, sittings, officers, jurisdiction, and procedure of district courts. The jurisdiction is limited to a hundred dollars, and actions relating to land, wills, malicious prosecution, libel, slander, criminal conversation, seduction, and breach of promise of marriage are excluded.

Export Duties.—Ordinance No. 13 of 1899 imposes export duties on log-wood and mahogany.

Constitution.—Ordinance No. 14 of 1899 provides that Imperial Statutes passed on or after January 1st, 1899, shall not take effect within the Colony.

Buildings.—Ordinance No. 18 of 1899 provides for the demolition of dangerous buildings.

Land Tax.—Ordinance No. 19 of 1899 deals with the collection of the land tax, and exempts parcels of less than five acres not being in a town from the tax.

Merchant Shipping.—Ordinance No. 21 of 1899 provides for the employment of unqualified pilots under certain circumstances.

Public Health.—Ordinance No. 22 of 1899 amends the Public Health Ordinance, 1894, as to water supply.

Customs.—Ordinance No. 24 of 1899 relieves friendly foreign Governments from payment of import duties, and from certain restrictions on the export of goods.

Ordinance No. 25 of 1899 gives power to sell goods after three years in warehouse, and makes provisions as to landing of goods.

6. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ.]

Laws passed—36.

Tramways.—The Tramways Law, 1899 (No. 1), amends the Laws of 1895 and 1897 by permitting the licensees for construction to open and operate a workable portion of a tramway before completion of the whole.

Indian Immigrants.—The proportion payable by immigrants of the expenses of their repatriation is increased from one-fourth to one-half (Law No. 2).

Rural Police.—It appears from the preamble to Law No. 5 that "the system of employing headmen and rural police has been found to be inconvenient and expensive." The law substitutes a somewhat amorphous body of district constables. The Inspector-General of Police may appoint in any parish such number of persons as he may think fit to be district constables. They must be householders resident in the parish, but their power and authority extends to all parts of the Island. Notwithstanding this provision it would seem that they are not expected to be more peripatetic than the defunct parish constables in England. They are to be "distributed throughout the parish in which each shall be resident." In case of a crime occurring "in the district," they are to make preliminary enquiry and give notice to the nearest constabulary station. They are to be under the general orders of the Inspector-General of Police and the officers of the Island constabulary, but there is no specific provision as to their acting beyond their own respective districts except in cases of emergency. Their pay is to be two shillings a day, but on special occasions may be raised to half a crown. The Law also provides for the appointment, on proper occasions of necessity, of special district constables; also for the employment as "special military district constables" of non-commissioned officers of her Majesty's Army within the district of Newcastle.

Gunpowder and Firearms.—The importation, storage, and sale of gunpowder and other explosives form the subject of Law No. 6, which is framed on the model of the existing Acts in the United Kingdom.

Succession Duty.—By Law No. 7 this duty is not leviable in the Island in respect of property situate in the United Kingdon. The Governor may

by proclamation extend this exemption to property situate in any Colony where no succession duty is leviable in respect of property situate in Jamaica.

Witnesses.—The principal enactments of Law No. 9 are that where a criminal prosecution is commenced by a private person, and not by the police or by an officer on behalf of the Crown, the expenses of witnesses are not to be paid unless the Court certifies that the case is one in which the expenses should be paid out of public funds; and that Government medical officers attending trials are to receive only their travelling expenses, but no fees.

Parochial Rates.—By Law No. 14 it is provided that all parochial rates leviable throughout the whole of a parish, whether for pauper purposes, sanitary purposes, or general purposes, shall be collected as one rate.

Licence Duties.—The licence duty for keeping and using firearms "on the premises of the owner" is raised from 2*s.* to 8*s.*, and a licence duty of 6*s.* is imposed on bicycles and tricycles.

Tariff.—The Island tariff is resettled by Law No. 20. The dutiable articles are scheduled under seventy-seven heads. The breakfast table does not appear to be quite free in Jamaica, biscuits, flour, rice, sugar, coffee, and tea being all in the list—coffee at £1 per one hundred pounds, and tea at 1*s.* per pound.

Horsedealing.—A licence is required by Law No. 30 to be taken out by every itinerant dealer in horses, and transactions with these dealers must be evidenced by a receipt in writing.

Cayman Islands.—In the Jamaica legislation of 1898 we noticed a Law enabling the Governor of Jamaica to appoint a Commissioner for this dependency, who presides in the Grand Court. This Legislature passes Laws described as being enacted by the "justices and vestry." They are signed by the Commissioner and assented to by the Governor of Jamaica. The Laws thus passed in 1899 are six in number. There is one for the appoint- of notaries, another for the extirpation of disease among cocoanut palms, and two with respect to the establishment of a general cemetery and for the closing of other burial-grounds.

7. TURK'S AND CAICOS ISLANDS.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—8.

Paupers.—The Commissioner (by Ordinance No. 2) is authorised to make regulations embodying the conditions under which relief may be given. This power is given without limitation or qualification. It is followed by two sections, the drafting of which leaves much to be desired, intended to provide that if the person relieved is or becomes possessed of any property,

his power of dealing with it is taken away until the expenses of his relief have been reimbursed to the Government.

Ordinance No. 3 amends the Pauper Immigrant Ordinance of 1898, which prevents the immigration of paupers and authorises the deportation of any who may effect a landing.

Summary Jurisdiction.—For purposes of summary jurisdiction the Turk's Islands are divided into two districts, each under a district magistrate. The Caicos Islands form a third. Ordinance No. 4 is a very useful code of procedure comprised in 193 sections for both criminal and civil matters. In regard to criminal matters a magistrate has jurisdiction similar to that of stipendiaries in England. In civil proceedings his jurisdiction is limited to £10, which seems a very low figure having regard to the geographical conditions of the dependency.

The procedure for preliminary examinations and summary trials follows that of the English Summary Jurisdiction Acts. It may, however, be noted that provision is made for the evidence of the prisoner at the summary trial only.

In the interpretation section the Legislature, in the exercise of a caution which seems altogether unnecessary, has created a pitfall. The expression "child" is defined as "a person who, in the opinion of the magistrate before whom he is brought, is under the age of twelve years *and of sufficient age and capacity to commit crime.*" The last words are superfluous, being part of the Common Law, or should be introduced in the part relating to summary convictions of children. It has been forgotten that one part of the Ordinance deals with bastardy and with the provision to be made for the children in that estate.

Another Ordinance (No. 5) is a penal code for offences which are liable summarily. It seems to be compiled from the Criminal Law Acts of 1861 and the Towns' Police Clauses Act.

Customs.—The last measure (No. 8) is a consolidation of the Customs Law in an Ordinance of 183 sections, which follow English precedents.

8. TRINIDAD AND TOBAGO.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1899)—31.

Municipal Government (No. 1).—The Port-of-Spain Ordinance, 1898, abolishes the elective mayor and council and empowers the Governor to appoint Commissioners who are incorporated as "The Port-of-Spain Town Commissioners," and in whom all the corporate property of the mayor and burgesses is to vest and upon whom all corporate debts and liabilities are

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered together with reference to the calendar year.

to devolve. The Commissioners are empowered to sell and lease corporate property, to make and levy the town rate, and to maintain and control all public cemeteries, streets, pavements, and markets, and generally perform all municipal duties and prepare annual estimates of income and expenditure and submit the same to the Governor for approval. The accounts of the Commissioners are to be subject to audit by the Auditor-General.

Education (No. 2).—The Elementary Education Ordinance, Tobago, 1899, empowers the Board of Education for Trinidad and Tobago to exercise control over the local management of all elementary schools in Tobago.

Consolidation of Statutes (No. 3).—The Statute Law Revision Ordinance, 1899, empowers the Governor to appoint Commissioners,[1] not exceeding three in number, for the purpose of preparing a revised edition of the Statute Laws and of all Orders in Council in force in the Colony.

The Commissioners are to have power—

(1) To omit (*a*) all Ordinances or parts of Ordinances which have been repealed; (*b*) all repealing enactments contained in Ordinances and all schedules of repealed Ordinances; (*c*) all preambles; (*d*) all amending Ordinances upon their amendments being embodied by the Commissioners in the Ordinances to which they relate;

(2) To consolidate into one Ordinance two or more Ordinances;

(3) To renumber sections of Ordinances on consolidation;

(4) To shorten and simplify the phraseology of any enactment;

(5) And generally revise, as may be necessary, matters of form and method.

The Ordinance makes the revised edition, upon approval by the Legislative Council, the Statute Book of the Colony.

Arbitrations (No. 5).—The Arbitration Ordinance (Amendment), 1899, amends the Ordinance of 1898 and makes referees or arbitrators appointed by order of the Court officers of the Court and subject in all proceedings to the rules of the Court and the direction of the judge, and their award equivalent to the verdict of a jury.

Railways (No. 6).—The Railway Ordinance, 1899, repeals the Railway Ordinance of 1896 and sets forth the general provisions for the construction, maintenance, and working of existing and future public railways in the Colony, which provisions are to be operative except so far as they are varied by the special Ordinance authorising the railway.

Sale of Food (No. 8).—The Sale of Produce Ordinance, 1899, is made applicable to the sale of cacao, cocoanut, coffee, nutmegs, kola nuts, tonca beans, and rubber, which articles are included in the term "licensable produce," for the sale of which a licence under the provisions of the Ordinance is necessary. Trading in licensable produce without a licence makes the

[1] The Ordinance makes no mention of the profession, status, or qualifications of the Commissioners to be entrusted with this important work.

trader liable to fine and imprisonment. Licensed dealers are restricted under the provisions of the Ordinance from purchasing licensable produce from persons under twelve years of age.

Larceny, "Prædial."—The Ordinance, besides the licensing provisions, gives power to the justices to order flogging and whipping in addition to sentences of imprisonment on the conviction of male persons for larceny of produce or as receivers of stolen goods, but no sentence of flogging is to be carried out until approved by the Governor.

The Mongoose (No. 9).—This Ordinance prohibits the importation of the mongoose.

Ganja (*Cannabis Indica*) (No. 10).—The Ganja Ordinance, 1899, regulates the sale of ganja by requiring a licence to be taken out yearly by every person who deals in opium, including ganja, at an annual fee of £10, and prohibits the cultivation of ganja in the Colony.

Water Supply (No. 16).—This Ordinance authorises and regulates the construction and maintenance of waterworks in various towns and districts of the Colony.

Beer and Brewing (No. 17).—The Beer Duties Ordinance, 1899, imposes a licence duty of £1 yearly on brewers and an excise duty of 6*d.* per gallon on worts of a sp. gr. 1050, and allows a drawback on export.

Immigration of Labour (No. 19).—The Immigration Ordinance, 1899, repeals the Immigration Ordinances Nos. 12, 14, and 24 of 1897 and No. 16 of 1898, and consolidates and amends the immigration laws of the Colony. The Ordinance contains 276 sections and a schedule with 57 statutory forms. The Ordinance is divided into 16 parts, as follows :—

Part i.—The Immigration Department.—The appointment of the Protector of Immigrants is made by the Crown, and his powers and duties are defined by the Ordinance. The Governor appoints Sub-Protectors and other immigration officials.

Part ii.—Fiscal Provisions.—The Ordinance establishes an Immigration Fund and imposes indenture fees, which rank as a first charge on the plantation named in the indenture of the immigrant.

Parts iii. to ix.—The Ordinance contains provisions as to the applications by employers for immigrants, their allotment on arrival, and all matters respecting the personal care of the immigrants, their dwellings, rations, hospitals, hours of work and wages, punishment for breaches of the indentures by absence from the plantations, desertion, etc.

Part x.—Special provisions are made as to the marriages and divorces of Indian immigrants, and the due registration on the Colonial registers of Indian immigrants' marriages and divorces.

Parts xi., xii., and xiii.—Provisions are made as to the transfer and determination of the indentures of immigrants, and the passports and return passages on completion of the indentures.

Parts xiv. and xv.—Provisions are made for the half-yearly returns of

the deaths of immigrants in public institutions, the keeping of estate registers of indentures, of dwellings of the immigrants, desertions, births, deaths, hospital cases, and cases before the magistrates. The general procedure before magistrates in all immigrants' cases is regulated by the Ordinance.

Part xvi.—Provisions are made with respect to the property of deceased immigrants, care of orphans, training schools for the children of immigrants, and regulations as to the public festivals of immigrants.

Stamp Duties (No. 21).—The Stamp Ordinance, 1899, imposes stamp duties on the various documents enumerated in the schedule, and gives to the Receiver-General of the Colony all necessary powers of management, subject to the direction of the Governor in Council.

Solicitors (No. 23).—The Solicitors Ordinance, 1899, is consolidated with the Solicitors Ordinances of 1896 and 1897, and amends the Ordinance of 1896 as regards the admission of persons admitted to practise in England under the Imperial Act, 20 & 21 Vict., No. 39 (the Colonial Attorneys' Relief Act). The Ordinance regulates the admission of articled clerks as solicitors, the procedure of the Court on enquiries as to the professional conduct of solicitors, and various other matters touching the status, character, and duties of solicitors. Solicitors or conveyancers are to take out a licence annually for practising as such, and the Registrar is to enter all the names of persons so licensed in a book, and cause such names to be published in the *Royal Gazette* within seven days of the date of the licence. The penalty for practising without a licence is, on conviction, to be a fine of not exceeding £20.

Local Defence (No. 25).—The Local Forces Ordinance, 1899, makes the police force liable for military service when called out by the Governor in case of actual or apprehended invasion, or of civil insurrection. A volunteer force consisting of a corps of light horse, a corps of artillery, and a corps of light infantry is authorised, and the police force and the volunteer force are the local forces of the Colony. Persons desiring to enter the volunteer force must enlist for three years certain. The Imperial Army Act is to apply to the local forces when called out for military service. The Ordinance gives the Governor power to issue regulations for the management and discipline of the local forces when not on actual military service.

Investments of Funds in Court (No. 26).—The Supreme Court Funds Ordinance, 1899, enables funds in Court to be invested as follows, namely:—

(*a*) On the securities authorised by rule of the High Court of Justice in England or by Imperial Statute for investment of cash under the control of the said Court;

(*b*) In Trinidad inscribed stock raised under the provisions of Ordinances authorising loans repayable by the Government for special purposes;

(*c*) On deposit in the Government Savings Bank to the credit of an account in the names of the trustees, or in such names as the Court may order;

(*d*) In the purchase, or

(*e*) On the security of freehold land in the Colony; but such land is not to consist of a sugar estate.

9. WINDWARD ISLANDS.

[*Contributed by* H. L. ORMSBY, ESQ.]

(i) GRENADA.

Ordinances passed—5.

Constitution.—Ordinances No. 1 of 1899 validates certain proceedings of the Legislative Council defective on account of informalities in the admission of certain members.

Punishment.—The Regulation of Corporal Punishment Ordinance, 1899 (No. 2 of 1899), gives the Court power to detain juvenile offenders in custody pending infliction of flogging, and limits the number of strokes to twelve at any one time.

Appropriation—Ordinances 3 and 4 of 1899 are Appropriation Ordinances.

Emigration.—The Emigration Regulation Ordinance, 1899 (No. 5 of 1899), provides for the licensing of emigration agents, inflicts a fine not exceeding £20 for acting in contravention, and gives power to the Governor in Council to make regulations for the purposes of the Ordinance.

(ii) ST. LUCIA.

Ordinances passed—21 (1 of which did not receive the assent of the Governor of the Windward Islands).

Highway.—The Road Tax Ordinance, 1899 (No. 1 of 1899), deals, with the collection of the road tax and the detection and committal of defaulters.

The Public Works and Road Ordinance, 1899, Amendment Ordinance, 1899 (No. 2 of 1899), deals with the inclusion and exclusion of roads as public highways or public byways, compensation for lands taken for widening and altering roads, etc. S. 14 prohibits cultivation within ten feet from the top of a cutting, and otherwise injuring roads, and injuring the surface of the road by the use of instruments to retard the descent of wheeled carriages down hills. S. 15 deals with offences as to obstructions, lights, injuring mile-marks, etc.

Superintendent of Works.—The Superintendent of Works Ordinance, 1899 (No. 8 of 1899), provides for the appointment of a Superintendent of Works, and the transfer to him of the duties of the Colonial Engineer.

Crown Lands.—The Commissioner of Crown Lands Ordinance, 1899 (No. 9 of 1899), provides for the appointment of a Commissioner of Crown Lands and for the transfer to him of the duties, etc., of the Colonial Surveyor.

Town Government.—The Towns and Villages Ordinance, 1887, Amendment Ordinance, 1899 (No. 11 of 1899), amends the procedure in cases of execution, and permits the exemption of school buildings from tax.

Police.—The Police Ordinance, 1887, Amendment Ordinance, 1899 (No. 12 of 1899), amends the previous Ordinance in various matters of detail.

Explosive Substance.—The Explosives Ordinance, 1885, Amendment Ordinance, 1899 (No. 13 of 1899), directs that gunpowder warehoused on importation shall be removed from the magazine within two years, and if not removed, be sold.

Patent.—The Patents Ordinance, 1899 (No. 15 of 1899), reproduces with certain alterations required by Colonial circumstances ss. 4–38, 85, 87–91, 96, 99, and 105 of the Imperial Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict., No. 57), with some additional sections as to rules and procedure.

Licence.—The Minor Products Protection Ordinance, 1899 (No. 16 of 1899), deals with the licensing of sellers of and dealers in minor products. S. 1 defines "minor products" as cocoa beans, logwood, sapwood, and any other agricultural product declared by proclamation to be a minor product. The Ordinance prohibits the sale of minor products except by licensed sellers and except to licensed dealers, and imposes a penalty for contravention not exceeding £10, or imprisonment not exceeding three months in default. The Ordinance also requires proprietors of plantations to be registered.

Fire.—The Criminal Code Amendment Ordinance, 1899 (No. 17 of 1899), imposes a penalty of £10 on persons burning land without permission.

Customs.—The Customs Tariff Amendment Ordinance, 1899 (No. 21 of 1899), increases the customs duties, except that on coal, by 15 per cent.

(iii) ST. VINCENT.

Ordinances passed—9.

Customs Duties.—The Customs Duties Ordinance, 1899 (No. 1 of 1899), and the Customs Duties Ordinance, 1899 (ii) (No. 9 of 1899), impose an additional duty of 10 per cent. for the years 1899–1900 on certain goods.

Land.—The Land Settlement Ordinance, 1899 (No. 2 of 1899), deals with compulsory purchase of land for public purposes. It directs (s. 14) the assessment of the purchase money on the basis of the amount paid by the last purchaser subject to rectification, but, strangely, does not provide for compensation for compulsory purchase.

Public Loans.—The Hurricane Loan Ordinance, 1899 (No. 3 of 1899), and the Amending Hurricane Loan Ordinance, 1899 (No. 7 of 1899), deal

with the administration and accounts of the loan of £50,000 from the Imperial Government in consequence of the hurricane of September 11th, 1898.

Appropriation.—The Appropriation Ordinance, 1899 (No. 4 of 1899), and the Appropriation Ordinance, 1899 (ii) (No. 8 of 1899), provide for the expenses of Government for the years 1899 and 1900.

Export Duties.—The Export Tax Ordinance, 1899 (No. 5 of 1899), abolishes export duties on rum and molasses.

10. LEEWARD ISLANDS.

[*Contributed by* H. L. ORMSBY, ESQ.]

Acts passed—9 (1 reserved and assented to by Order in Council).

Constitution.—Act No. 1 of 1899 repeals ss. 17, 18, 19, and 22 of the Leeward Islands Act, 1871, and the two amending Acts of 1882 and 1898, and provides for the five Presidencies—Antigua, St. Christopher and Nevis, Dominica, Montserrat, and the Virgin Islands (s. 2); for eight elective and eight official members of the Legislative Council (ss. 3–5); vacation of seats of elective member by acceptance of office (s. 6); quorum to be seven (s. 7); resignation (s. 8); presiding and original and casting vote of Governor, etc., (ss. 9, 10). (This Act was reserved and assented to by Order in Council of December 27th, 1899.)

"**Nolle Prosequi.**"—The Prisoners' Release Act, 1899 (No. 4 of 1899), enacts that the Attorney-General shall consider depositions and decide whether he will present indictment or not (s. 2). Discharge of prisoners, when no indictment (including prosecutors committed for refusing to enter into recognisances), and release of bail, etc (ss. 3, 4).

"**Habeas Corpus.**"—Act No. 5 of 1899 substitutes a warrant signed by Governor or Commissioner for writ of *habeas corpus ad testificandum*.

Education.—The Mico Act, 1899 (No. 7 of 1899), provides for payment of £2 10*s.* quarterly to Mico Trustees as capitation grant for Leeward Islands students trained in Trustees' Training College, Jamaica.

Weights and Measures.—Act No. 8 of 1899 enacts that the fee for examining Fairbank's platform scales and similar machines is to be 1*s.* for each separate weight.

Friendly Society.—The Friendly Societies Act, 1880, Amendment Act, 1899: Registrar of Supreme Court to be Registrar of Friendly Societies.

(i) ANTIGUA.

Ordinances passed—32 (1 not sanctioned).

Bicycles.—The Bicycle Ordinance, 1899 (No. 3 of 1899), defines "bicycle" as including tricycle and velocipede, and provides that persons riding such machines shall give notice of approach and carry lights at night.

Revenue.—Ordinances Nos. 1, 2, 5, 25, 28, and 29 deal with amendmends to customs and excise duties.

Income Tax.—The Income and Trade Tax Ordinance, 1899 (No. 6 of 1899), and the Income and Trade Tax Ordinance, 1899, Amendment Ordinance, 1899 (No. 26 of 1899), provide for the levy, collection, payment, and expenses of an income tax and trade licences. Incomes from £100 to £150 are taxed at the rate of 2 per cent., and those over £150 at the rate of 3 per cent.; in the case of incomes derived from interest in land the amount of land tax paid may be deducted. Trade licences vary from £20 to £1 5*s.* for traders and 5*s.* for hucksters and pedlars. Auctioneers pay £3.

Land Tax.—The Land Tax Ordinance, 1899 (No. 7 of 1899), fixes the land tax at 2*s.* per acre for sugar-cane lands, 1*s.* per acre for other cultivated lands, and 6*d.* per acre for pasture lands.

Marine Stores.—The Metal Act, 1863, Amendment Ordinance, 1899 (No. 8 of 1899), contains provisions similar to those of s. 8 of the Old Metal Dealers Act, 1861 (24 & 25 Vict., No. 110), except that the hours of purchase are from 8 A.M. to 6 P.M., and that the period during which the metals may not be disfigured is six weeks instead of forty-eight hours, while for the schedule to 34–5 Vict. No., 112, the uniform minimum quantity of twenty-five pounds is substituted.

Public Health.—The Infectious Diseases Notification Ordinance, 1899 (No. 10 of 1899), closely follows the Imperial Infectious Diseases Notification Act, 1889 (52 & 53 Vict., No. 72).

Guns.—The Gun Licences Ordinance, 1899 (No. 11 of 1899), provides for the licensing of guns at a rate of 2*s.* 6*d.* for the first and 6*d.* each for further guns.

Poor.—The Medical and Poor Relief Ordinance, 1899 (No. 13 of 1899), provides for the management of the Hollerton Institution (consisting of a hospital, a poorhouse, a soup-kitchen, and workhouse) and its maintenance out of the Colonial Exchequer. It also provides for the appointment, residence, duties, and remuneration of district medical officers, and for the licensing, regulation, and remuneration of midwives.

Highway.—The Road Ordinance, 1899 (No. 16 of 1899), provides for the appointment of road overseers.

Newspapers.—Ordinance No. 17 of 1899 amends Act No. 2 of 1883 as to the registration of newspapers by making that Act and an amending Act (No. 8 of 1883) apply to editors as well as to proprietors and publishers.

Dogs.—Ordinance No. 20 of 1899 amends Act No. 10 of 1896 by substituting metal badges for collars.

Gunpowder—Petroleum.—The Gunpowder and Petroleum Acts Amendment Ordinance, 1899 (No. 23 of 1899), makes it lawful to warehouse in bond petroleum in quantities above twenty-five gallons, and provides that the quantities of gunpowder and petroleum kept for sale shall not exceed

twenty pounds and ninety-six gallons respectively, without consent of the Colonial Treasurer.

Legislative Council.—Ordinance No. 30 of 1899 amends Act No. 1 and Ordinance No. 10 of 1898, and provides that the Legislative Council consist of eight official and eight unofficial members, all to be appointed by her Majesty.

Spirits.—The Rum Ordinance, 1899 (No. 32 of 1899), regulates the distillation of rum.

(ii) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—18 (1 to be repealed, and a Consolidating Ordinance passed).

Carriage Tax.—The Wheel Tax Amendment Ordinance, 1899 (No. 3 of 1899), enacts that only vehicles incapable of being used through disrepair shall be exempt; power for Governor in Council to make rules.

Defence Force.—The Defence Force Ordinance, 1899 (No. 6 of 1899), repeals the Volunteer Ordinance, 1896. Defence Force formed; qualification £50 income (s. 5); enlistment, engagement, oath (ss. 7–9, sch. A B); commanding officer not under rank of major; adjutant with salary not exceeding £50; officers to be British subjects (s. 10); first uniform provided by Government (s. 11); arms and a hundred rounds annually supplied by Government (s. 12); parades, drills, inspection (ss. 13, 14); capitation grant, 30*s.* infantry, 40*s.* mounted infantry (s. 18); property of corps, rules (ss. 16, 17) calling out in case of riots, fires, and for preservation of peace (ss. 18, 19); courts of enquiry (s. 20); offences (s. 21, sch. C); arrest for breach of discipline (s. 22); expulsion from force (s. 23); superannuation (s. 24); resignation (s. 25); power for Governor to disband (s. 26); Governor may make regulations and standing orders (s. 27); under command of officers of regular forces (s. 28); actual service: calling out for (s. 29), discipline on (s. 30), pay, etc., allowance to families, etc. (ss. 31–33), impressment of carriages, men, etc. (s. 34); compulsory service: if Defence Force less than 250 or mounted infantry than 80, Government may by proclamation bring compulsory service clauses into force (s. 35), liability 17 to 40 (s. 36), exemptions: councillors, judges, etc., police, fire brigade, medical practitioners, officers of hospitals, etc., ministers of religion, barristers, persons physically incapable, foreign consuls (s. 37, sch. D.); enrolment, ballot (ss. 38–40); miscellaneous: protection of persons, property, butts, arms, etc. (ss. 41–46), immunities of members of force (s. 49).

Horse Tax.—Ordinance No. 7 of 1899 repeals No. 11 of 1892, which imposed a tax of £2 on small stallions under the age of ten years.

Harbour Dues.—The Public Piers and Wharves Ordinance, 1899 (No. 8 of 1899), enacts a scale of wharfage dues.

Dogs.—The Dog Licence Consolidation Ordinance, 1899 (No. 13 of

1899), repeals the previous laws as to dog licences and enacts that all dogs over six months old are to be licensed (*2s.*) and to wear badges.

Medical Districts.—The Medical Districts Consolidation Ordinance, 1899 (No. 14 of 1899), provides for six medical districts (s. 5); for appointment, residence, and duties of medical officers (ss. 6–8); cost of medicines supplied in six districts not to exceed £155 (s. 9); medical officers to attend cases of sudden illness without requiring prepayment of fees (s. 10); letters to hospital (s. 11); reports and returns (ss. 12, 13).

Marine Stores.—The Metal Ordinance, 1899 (No 15 of 1899), contains provisions similar to those of s. 8 of the Old Metal Dealers Act, 1861 (24 & 25 Vict., No. 110), except that the hours of purchase are 8 A.M. to 6 P.M., and the period during which metals may not be disfigured is four weeks instead of forty-eight hours, while for the schedule to the Imperial Act the uniform quantity of twenty-five pounds is substituted.

(iii) DOMINICA.

Ordinances passed—11 (1 not sanctioned).

Constitution.—The Constitution Ordinance, 1899 (No. 2 of 1899), repeals ss. 5 and 11 of the Constitution Act, 1898, and enacts that the Legislative Council shall consist of the Governor, the Administrator, six official and six unofficial members (s. 2); Governor, Administrator, or member presiding to have original and casting vote; if Governor and Administrator both present, Administrator not to have casting vote (s. 3).

Taxes: Income Tax, Licence Duty, Horse Tax, Dog Tax.—The General Tax Acts Consolidation Ordinance, 1899 (No. 7 of 1899), repeals the General Tax Acts (s. 48, sch. I), and provides for income tax at 2½ per cent. on incomes from £50 to £100, and 3½ per cent. on incomes of £100 and upwards; deductions: amount of licence duty; exemptions for friendly societies, savings banks and their depositors, charitable institutions (ss. 4–17, sch. A); horse tax, 10*s.*; exemption: one horse for minister of religion (ss. 18, 19, sch. B); dog tax, 2*s.* 6*d.* in Roseau (s. 20, sch. B); trade licences: first-class licence to cover all kinds of goods except those requiring special licence; commissioners to decide what class of licence to be issued; one licence for each shop, etc.; outdoor sellers to be hucksters and to have label; penalties (ss. 23–36); 1st class, £12; 2nd, £9; 3rd, £6; 4th, £3; 5th, £1 10*s.*; 6th, £1; hucksters, 15*s.* (sch. C). General licences: bankers, £25; auctioneer, £6; civil engineer and land surveyor not paying income tax, £5 (ss. 37, 38, sch. D); boat licences and label: canoes, 5*d.* per foot length, minimum 6*s.*, sailing barges £1; between Scotts Head Point and Morceau Bay, canoes, 2*d.* per foot, minimum 3*s.*; sailing barges 10*s.* (ss. 21, 22, sch. E); forging or fraudulently using licences or badges is punishable by a fine of £50 (s. 43).

(iv) MONTSERRAT.

Ordinances passed—12 (1 not sanctioned).

Highway.—The Road Ordinance, 1890, Amendment Ordinance, 1899 (Ordinance No. 2 of 1899), enacts that no member of the Leeward Islands police force shall be liable to perform statute labour or make any payment in lieu thereof.

Merchant Shipping.—The Passengers Ordinance, 1899 (Ordinance No. 3 of 1899): the enactment does not apply to ships under the Imperial Merchant Shipping Act, 1894, or having a registered agent in the Presidency (s. 3); number of passengers limited to one per ton (s. 4); list of passengers to be lodged with treasurer (s. 5); inspection (s. 6); ships carrying too many passengers liable to penalty of £100 and to forfeiture (s. 7); limited number of passengers not to apply to ships sailing for Island of Redonda (s. 8); open boats, etc., not to take passengers out of Presidency (s. 9); penalties (s. 10); protection of persons acting under Ordinance (s. 12).

Land and House Tax.—The Land and House Tax Ordinance, 1899 (No. 7 of 1899): the instalment of these taxes due in October, 1898, is remitted (s. 3); the taxes are suspended for 1899 (s. 4). Taxes for 1899: 1*s.* per acre for cultivated land and 6*d.* for uncultivated; house tax, 5 per cent. on rental (ss. 5, 6); churches, school and ministers' houses exempt (s. 7); returns and declarations (ss. 8–10); penalties (ss. 11–13); power to measure land, penalty for obstruction (ss. 14, 18); assessment of houses (s. 16); remission by Governor (s. 19); recovery and collection (ss. 20–22).

Licence.—The Liquor Licences Ordinance, 1896, Amendment Ordinance, 1899 (Ordinance No. 11 of 1899), provides for issue of special country licences to sell rum beyond three miles from Plymouth; fee, £1 17*s.* 6*d.*

(v) THE VIRGIN ISLANDS.

Ordinances passed—4 (1 not sanctioned).

Interpretation.—The Interpretation of Laws Ordinance, 1899 (No. 1 of 1899), is based on the Imperial Statute (52 & 53 Vict., No. 63), with variations required by Colonial circumstances.

X. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—6.

Bail.—When a justice has power, under the Justices Ordinance, 1890, to admit to bail, he may, if he thinks fit, dispense with sureties. The preamble states that persons are sometimes kept for long periods in prison on account of their inability to find sureties (No. 1).

Evidence.—Provision is made for the admission of the evidence of the prisoner in criminal cases (No. 2). The recent law of the United Kingdom is followed.

Jurors.—To be qualified as a juror a man must be between the ages of twenty-one and sixty, and must occupy premises assessed at the annual value of £30, or of the rack-rent value of £30.

2. MALTA.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—12.

Aliens.—Ordinance No. 1 is a somewhat strong measure against the introduction of undesirable aliens. On arrival all aliens must give a full account of themselves. If they are going to reside, they must give further particulars and guarantees that they will not become a burden on Malta. The guarantors must be British subjects. Where an alien cannot comply with the law, or commits any breach of it, he may be expelled.

Importation of Cattle.—A duty of 4*s.* per 175 pounds weight is imposed on imported cattle, and the same on live sheep (No. 2).

Industrial Schools.—Provision is made for the establishment of industrial schools and houses of correction in Malta and Gozo (No. 3).

Official Secrets.—The Criminal Laws are amended by provisions against the disclosure of official secrets (No. 6).

Mendicancy.—The Governor may "make regulations concerning street begging." The relatives of a beggar who is unable to work and destitute of means of subsistence, if they are known to have means, shall be "denounced to the Crown Advocate," who may take proceedings to compel them to maintain the beggar. No person may adopt the profession of a scavenger without a licence (No. 9).

Patents.—The laws relating to patents, designs, and trade marks are consolidated and amended by Ordinance No. 11.

Plague.—Regulations are made for combating plague by Ordinance

No. 12. As is usual and necessary, very strong powers are entrusted to the Governor and the Chief Medical Officer. A curious provision that on the appearance of plague the Governor may direct the medical officers "to place themselves at the service of the sick in the said locality" is followed by somewhat elaborate provisions for pensioning the widows and children of the medical officers.

3. CYPRUS.

[*Contributed by* ALBERT GRAY, ESQ.]

Laws passed—27.

Licences to Convicts.—Provision is made for allowing convicts to be at large before the termination of their period of imprisonment. The conditions are similar to those in force in the United Kingdom (No. 1).

Land Acquisition.—Law No. 6 is a short Lands Clauses Act giving the salient provisions of English law.

Rule of the Road.—The English rule of taking the left of a meeting vehicle and of taking the right on overtaking a vehicle is made law by No. 9.

Sponge-Fishing.—It is declared unlawful for any person to fish for sponge within the territorial waters "unless he be duly licensed" (No. 18). Moreover, the Commissioner may prescribe the limits within which sponge-fishing is to be carried on in the territorial waters. There is an inaccuracy in the drafting of this Law. By s. 2 it would seem that the person must be licensed, while s. 7 provides only for the licensing of the boats. The fees are heavy—£25 annually for a boat with diving apparatus, £9 for a boat using divers, but not diving apparatus, and £3 10*s.* for boats using harpoons only.

Poisons and Drugs.—For the sale of poisons and drugs, other than ordinary medicines, a special licence is required. A special book must be kept showing the amount and description of the poisons and drugs sold, with the names of purchasers.

State Lands.—By Law No. 21 the Commissioner has power to appoint a Delimitation Commission of not less than three persons for the purpose of delimiting State lands. They will report as to the persons or communities who have for twenty years been accustomed to pasture animals on those lands, and will accordingly be recognised as possessing "customary grazing rights." There is a general provision that the existence of such rights is not to prevent the Government from selling the State lands, but it is followed by another that on the delimitation the Commission are to set aside one-half of the tract for the exercise of the customary rights.

Tariff.—The Cyprus tariff is considerably altered by Law No. 22. Tithe

on olives and olive oil and cotton seed is abolished; the export duties on aniseed, cotton, linseed, raisins, etc., are altered, and the goods so taxed are relieved from the payment of locust tax. An excise duty is imposed on tobacco manufactured in the Island of two shillings and four and a half piastres per oke.

Dispensaries.—Provision is made by Law No. 23 for the establishment of medical officers and dispensaries in rural districts.

Olives.—A Law (No. 24) passed apparently with the view of checking the stealing of olives prohibits the gathering of olives before a date to be fixed by the District Commissioner with respect to each village. An owner may, however, commence picking before that date if he gives notice to the Mukhtar of the village. There is also a prohibition against picking olives by night, even after the date fixed for the ingathering.

Branch Roads.—Under the Limassol Roads Law, 1885, certain roads were liable to be maintained by the landowners. This obligation is now (Law No. 27) transferred to the villages. The Commissioner of the district is to apportion the roads between the villages, each of which has to supply its quota of labourers. The manner of calling out and employing the labour is regulated by the Village Roads Law, 1896, and the Branch Roads Construction Law, 1892.

INDEX TO REVIEW OF LEGISLATION.

NOTES.

Reciprocity for Solicitors throughout the Empire.—The President of the Incorporated Law Society in his annual address naturally adverted with satisfaction to the Colonial Solicitors Act, 1900.

"This," said Mr. Ellett, "is a measure which was for some years advocated by the society, and there is a fitness in its becoming law at the present time, when we see such a wonderful and encouraging drawing together of the Colonies and the Mother Country. The object of the Act is to enable a solicitor of a Supreme Court in any British possession to which the Act may be applied by Order in Council, and whose regulations are such as to secure proper qualifications and competency, and in which English solicitors are admitted on like terms, to be admitted to practise here. It is probable that the change of sphere of practice which the Act facilitates will more frequently be made by young English solicitors than by our Colonial brethren; but however that may be, we welcome this statutory recognition of their and our membership of one Empire, and if those of them who come here prove—as we do not doubt they will—as able and honourable competitors in our friendly strife as their brothers have proved themselves brave and skilful comrades in the field of battle, we shall extend to them the same cordial welcome to our ranks as we confidently anticipate for those who may go out from us to practise in the Colonies." This is in the right spirit, and full of promise for unity in other fields of law.

Montesquieu and Comparative Jurisprudence.—At the recent International Congress of Comparative Law in Paris Sir Frederick Pollock read a paper on *Le Droit Comparé: Prolégomènes de son Histoire.* One of the many interesting points touched upon is the position of Montesquieu in the history of Comparative Jurisprudence. With many French writers it is an axiom that he was the true creator of the science. The paper does not quite agree with this. While recognising the width of his vision, the variety of his knowledge, Sir Frederick Pollock notes grave defects—in particular a failure to observe that there exist in political institutions "non seulement des uniformités, mais l'uniformité qui se rattache à l'ordre normal de leur développement, et qui donne la clef des autres." And so Montesquieu draws his illustrations and evidences from wholly diverse countries and times without reference to the context, passing from Cyrus to Alexander, from Alexander to Charles II., and putting the Spanish cheek by jowl with the Chinese. "Les faits divers ne sont pas les pierres sur lesquelles on peut fonder le temple de la science." We note that in discussing the origin of Comparative Jurisprudence there is no reference to Vico; and yet the Neapolitan thinker, in his book *De Uno Universi Juris*

Principio, enunciates views about jurisprudence at least as wide and far-seeing as those to be found in *L'Esprit des Lois*.

"Comparative Jurisprudence."—In the same paper Sir Frederick Pollock discusses the origin of the phrase "Comparative Jurisprudence." He hints that the phrase "Droit comparé" was unknown in 1860. Littré does not mention it in his *Dictionary*. The phrase "Comparative Jurisprudence," is to be found in the *Quarterly Review* in 1861, and Sir Henry Maine, lecturing in 1870, uses the phrase as if well known. The conclusion is, that it began to be in circulation in 1863 to 1865. In Germany "Vergleichende Rechtswissenschaft" is probably of much earlier origin; but no trace of this phrase appears in so popular a manual as Falck's *Juristirsche Encyclopädie*, 1830.

Drowning off and on a Vessel.—Over-refining has always been the snare of the lawyer: it comes of the analytic mind exercising itself on the letter of the *lex scripta* with an insufficient regard to its spirit and final cause; it leads us into strange labyrinths of artificiality, and its end is that of the learned judge whose epitaph was *Leges Angliæ in absurdum reduxit*. This moralising strain is suggested by a recent American case (*Rundell* v. *La Compagnie Générale Transatlantique*), arising out of the drowning of a passenger by *La Bourgoyne*—a French ship belonging to the defendant company—in a collision with an English sailing vessel. The collision was due, admittedly, to the negligence of *La Bourgoyne*, and the administrator of the drowned man sued the French company in an American Court of Admiralty to recover damages for the benefit of the minor son of the deceased. The passenger, it seems, had jumped into the sea, to escape drowning, just before the vessel went down. Thereupon the defendant company took the exception that the tort had not occurred on board the vessel, but on the high seas, and therefore by Admiralty Law outside the jurisdiction of the French flag; and this view the United States Court of Appeal adopted. The negligence of *La Bourgoyne*, it held, was by itself only *damnum absque injuriâ*; the true locus of the tort was where the tort was finally consummated, and that was where the passenger was drowned: *solvuntur tabulæ*. It is a curious and startling result—technicality triumphant; but if technicality is to prevail, why should not the ship, as a floating island, carry with it a three-mile zone of territorial waters? However that may be, one obvious moral is the advantage in emergencies of this kind of knowing the law. Lord Westbury was once being driven in his carriage, when the horses bolted. "I can't hold them, sir," said the affrighted coachman. "What shall I do?" Lord Westbury had the true lawyer's instinct. "Drive into something *cheap*," he said. Had the passenger on *La Bourgoyne* only properly grasped the true legal doctrine of the locus of a tort, he would no doubt, with the presence of mind born of knowledge, have stood to attention like the heroes of the *Birkenhead* and gone down with the vessel, reassured by feeling that he was leaving an unexceptionable cause of action to his administrator.

The Delagoa Arbitration.—In the report of the Delagoa Bay Arbitration (*Sentence Finale du Tribunal Arbitral du Delagoa*) which is before us are discussed with great ability many interesting legal questions, and, among others, the measure of damages (*compensation à allouer*). Three modes of assessment were suggested. The first was to view the so-called "compensation" as really of the nature of damages; to make it equal to the pecuniary injury sustained and the benefits lost. The second was to estimate the interest which the petitioners had in the contract entered into by Portugal; an engagement which, according to Art. 42 of the concession, might be cancelled, in certain circumstances, the works and plant being put up for six months to the highest bidder, and knocked down to him. A third view, roughly stated, was that the compensation was to be estimated on the basis of the useful and effective expenditure. Portugal contended that the word "compensation" excluded the idea of damages. That was not the opinion of the arbitrators, who thought the word "compensation" was used loosely. On the fact before them they also came to the conclusion that the line had not really been taken possession of in pursuance of the concession; contentions to the contrary were pretexts. That being so, there was only one criterion: "Ce principe ne peut-être que celui des dommages et intérêts, du *id quod interest*, comprenant, d'après les régles de droit universellement admises, *le damnum emergens* et le *lucrum cessons*; le prejudice eprouvé et le gain manqué."

Legal Effects of Annexation.—A writer in the *Cape Law Journal*, dealing with the effect of annexation in South Africa, boldly answers some of the most difficult questions which have been propounded. According to Mr. Gardiner, "the position of the Netherlands Railway Company is governed by what is said above," *i.e.* as to the principle that Great Britain is the successor of the Governments of the two Republics. "According to International Law, Great Britain is bound to respect the property of the company, though, should she declare her intention not to do so, a British Court would not interfere. As successor to the Transvaal Government, Great Britain will become a large shareholder in the company. She will also acquire the right of expropriation given to the Transvaal Government in the contract between the company and that Government." Mr. Gardiner also writes unhesitatingly as to another important point: "Great Britain will also acquire the right of expropriation given to the Transvaal Government in the Dynamite Concession, and will be entitled to take advantage of any breach of the concession which has not already been adjudicated upon by the Transvaal Courts." We note that Mr. Gardiner describes the judgment of the Judicial Committee in *Cook* v. *Spriggs* as "somewhat unsatisfactory."

Conciliation in Quebec.—Lord Justice Knight Bruce had once before him a quarrel over a plumber's bill. It was a trumpery matter of £5; yet "upon a matter," as the Lord Justice says, "that if the parties had not good sense enough to settle it for themselves, some respectable neighbour would probably upon application have adjusted for them in an hour—

began the career of cost and heat and hatred, of reproach, scandal, and misery, in which they are now engaged, of which neither this day nor this year will, I fear, see the end, and which seems to exemplify an old English saying, that the mother of mischief is no bigger than a midget's wing." *Obsta principiis*, that is the moral, and the Legislative Council of Quebec has just been giving effect to it by passing an Act of Conciliation. By this Act, which evidently draws its inspiration from the Code Civil of France, no principal demand under $25, being the initial proceeding in a suit, is to be received before any Court of first instance unless the defendant has previously been summoned in conciliation before one of the conciliators under the Act. These conciliators are either official, appointed by the local council of the municipality, or *de jure*, priests and Roman Catholic *curés*, justices of the peace, and the mayor of the municipality. The procedure is simplicity itself—no "White Book" wanted. It takes the form of a notice by a conciliator to the defendant of this kind: "Mr. X. claims from you the sum of for (*grounds of claim*); and as he wishes to avoid the annoyance of a lawsuit, he has requested me to act as conciliator between you. You are therefore requested to appear before me," etc. A defendant failing to appear to such a notice without valid reasons is liable for all the costs of any suit afterwards brought. Surely here is a glimpse of a new "golden age"!

The Parliaments of the Empire.—A new toast was this year added to the list at the Lord Mayor's banquet—"The Parliaments of the Empire"; and the circumstance is significant. It shows that the commercial centre of the Empire is awakening to the fact that there really are Legislatures existing outside our own. But do Englishmen, do even English lawyers, at all realise the energy of those distant Legislatures, the amount of their output, the range and variety of the topics with which they deal? These things may be seen mirrored in the "Review of Imperial Legislation" at pp. 517–647 of this number of the Journal. But it is not only, it is to be remembered, the Legislatures of our Colonies and dependencies which are making the law; the Courts of Justice scattered all over the Empire are busy with the same task. At p. 473 of this number will be seen a notice of an important and interesting judgment from Lagos; at p. 514 a notice of another from Natal dealing with Martial Law; in the August number was given a very elaborate judgment of Sir Henry Villiers, the Chief Justice of the Cape, in the *Mashona* case—for all of which the editors are indebted to the courtesy of the Colonial Office; and these are merely samples of what is doing all over the Empire. The law which these Courts are administering—and moulding as they administer—is most of it based upon English Common Law and English equity; even where it is not, it is instructive from its very difference; and yet may it not be said that we "care for none of these things!" In none of our law libraries are complete reports of Colonial decisions to be found—not even a digest. American decisions are constantly being cited in our Courts; those of our own Colonies, never.

America and the Scienter Doctrine.—The Common Law of England, with its rude but robust common sense, is a reflection of the national character. That self help which figures so largely in it, what is it but Anglo-Saxon independence of spirit? The "hob-nob, giv't or tak't," of our national pastimes, which Sir Michael Foster allows in law, what are they but the outcome of the superabundant vigour of the race, as in the friendly buffets exchanged between King Richard and Friar Tuck? With all its theoretical respect for the sacredness of a man's person, our law has never been very squeamish about a little roughness. The scienter doctrine comes from the same source. Englishmen are fond of animals and tolerant of their peccadilloes. The dog, for instance, is, generally speaking, a well-conducted animal—not fierce, as Holt C.J. remarked. If there are exceptions, people must put up with them, as they do with the mischief of children,—that is the Englishman's feeling. The whole race of dogs is not, for the failings of a few, to be branded as *feræ naturæ*; yet this is the only alternative, as our law classifies animals. It is this rudimentary classification into *feræ* and *mansuetæ naturæ*, coupled with the doctrine of insuring safety (*Fletcher* v. *Rylands*), which creates the difficulty of the situation. American law has a similar classification, but it does not accept, and is therefore not embarrassed by, the doctrine of *Fletcher* v. *Rylands*. All it requires, when knowledge of mischievousness is brought home to the owner, is special care and precaution. Hence the "scienter," even if proved, carries no great burden with it; and the centre of legal gravity tends more and more to shift itself from the proof of the "scienter" to a question of reasonable care. Cooley, indeed, in his standard work on *Torts*, plainly rests the liability of the owner of a wild animal on the doctrine of negligence. "We must take up," he says, "the Common Law of that period in this as in many other particulars, more to locate accurately our point of departure than to fix definitely a stake to which we must tie and adhere. When wild animals are kept for some purpose recognised as not censurable, all we can demand of the keeper is that he shall take that superior precaution to prevent their doing mischief which their propensities in that direction justly demand of him." Unfortunately we in England *are* tied to the "scienter" stake of the Common Law and the doctrine of insuring safety. If we were legislating for Utopia we might say, as some foreign nations do, that the owner of an animal should be liable for its mischief unless he disproved negligence; but will the British legislator, with his sympathies for animals and sporting instincts, ever be persuaded to make the law in that sense?

The Cape Colony Law Courts and the War.—The Cape Colony law reports contain, as might be expected, several cases arising out of the war in South Africa. We note one or two mentioned in the Digest of Cases compiled by the *Cape Law Journal*. In the case of *In re Fourd* the Supreme Court refused to interfere where Martial Law had been proclaimed, and the military authorities had arrested and sentenced to imprisonment the applicant.

The Court seems to have expressed, on what grounds does not appear, a doubt whether, after the termination of the war and the cessation of military law, the orders of a military Court of Inquiry could be regarded as having any validity in a civil Court. In *Owen* v. *Smit* a point of interest as to the rights of guerillists arose. The accused was charged with receiving stolen property knowing it to be stolen. It had been taken from a railway station by two Free State burghers during the invasion of the district. As they were not acting with any army or under any military organisation, but apparently moving about the country on their own account, it was held that there was sufficient evidence of a theft to justify a conviction for receiving stolen property. In *Queen* v. *Birch* came under review the conviction, by an assistant resident magistrate, of the accused for contravening a proclamation issued by the commandant of Queenstown, in which Martial Law was in force. The judges quashed the conviction on the ground that a breach of Martial Law cannot be tried under a magistrate's ordinary jurisdiction. One cannot help being struck by the fact that the great bulk of the decisions reported are such as might be given in a community living in profound peace.

Donationes Mortis Causâ.—The *donatio mortis causâ* goes back as far as Homer: so says Justinian in the *Institutes*. When young Telemachus is going to risk his life in an attack on the proud suitors of his mother, the fair Penelope, he makes a gift of goods to Piræus, to enjoy, if he himself should be slain in his attempt; to restore, if he should return victorious; and the illustration is a good one as typical of the circumstances under which in days more hazardous than our own the *donatio mortis causâ* grew up. Yet still it fills a useful place in law, this conditional form of dying disposition. "Amphibious" Story calls it half legacy, half gift. Justinian elected to treat it rather as a legacy than a gift, English law rather as a gift than a legacy. As a consequence Roman law, according to the better opinion, did not insist on delivery—the characteristic of a gift; English law does, and the delivery must be such as takes the possession out of the donor. It is not a sufficient delivery, for instance, if the delivery is merely to an agent, trustee, or servant of the donor, for that does not really dispossess the donor; but delivery to an independent third person for the donee is enough, and it makes no difference that the donee knew nothing about the gift—so the Supreme Court of Canada has just decided (*Walker* v. *Foster*, 30 Rep. Sup. Court of Canada, 299). In this case the donor was not meeting any sudden emergency, but merely wanting to dispose of his property after his death without making a will. To accomplish this he placed certain promissory notes (Lord Romilly long ago decided that a promissory note might be the subject of a valid *donatio mortis causâ*) in envelopes addressed to each of his five children, and these envelopes, with their contents, he kept in a desk at his bedside for some years locked up and under his control. Shortly before his death, when the donor believed he would die, he had the envelopes, in which the notes were, taken from the desk and handed to one D., who

was directed by him to seal up the envelopes, replace them in the desk, and lock it. Then he delivered the keys to D., to retain until after his death, when he instructed him to deliver to each of his children one of the envelopes so addressed, which D. afterwards did. The plan, in this instance, succeeded; but a *donatio mortis causâ* is beset with too many thorns of technicality to make it either a convenient or safe substitute for a testamentary disposition—even for the pleasure of frustrating the Finance Act.

Prison Laboratories.—"The comprehensive study of the criminal class in society," says Mr. Brockway, an American expert, "is of great importance, and should be initiated and carried on under State direction. Having personally observed some fifty thousand prisoners, I am more and more impressed with the conviction that the prison class is a class different from others who do not fall into crime. One who should travel throughout the world visiting prisons of different nations, and the prisoners therein, would be struck, if an intelligent observer, with the similarity of general appearance of prison populations. The distinguishing characteristics of criminals, which, when observed in mass, give such a positive impression, ought to be inquired into and published for the information of the law-makers and those who administer laws." A committee of the National Prison Association, United States, following up these suggestions, have lately made a report on the subject (6 *American Journal of Sociology*, 318). "We recommend," say the committee, "a laboratory furnished with the best modern instruments of precision, conducted by a specialist or trained observer, for the scientific study of prison populations, with special reference to obvious practical needs of the administration in the discipline, instruction, and training of prisoners. These studies would be:—Physical: the anatomy and physiology of prisoners; measurements of sensation and other manifestations of mind through the body; and the hereditary factors. Psychical: the mental, emotional, voluntary life-activities; the tastes, ideas, knowledge, motives. Social: the domestic industrial neighbourhood, legal, political, and religious environment which have influenced the character and conduct. All these factors enter into every life and help to shape it, and no one of them taken alone is sufficient for an explanation." The committee go on to point out the advantages of such a prison laboratory: "It is useful for discipline; for the direction of aid to discharged prisoners; for the enlightenment of Legislatures, Courts, and authorities in Criminal Law and procedure. It promises to make important contributions to the various sciences of human life: to anatomy, physiology, anthropology, psychology, sociology. The prisons would thus be brought into contact with the great life of universities, and would assist millions of convicts throughout the world."

Juries and New Trials.—Juries are not infallible, as everybody knows; but it is the interest of the State that there should be finality in the determination of issues of fact, and the policy of our law accordingly is to make the finding of a jury conclusive. Even when the Court takes upon itself to

review a finding, it criticises only for the purpose of sending the case before another jury, not to usurp a jury's function. Still, it does review, and of late years there has been much judicial refining, as to the true limit of intervention, to preserve the theoretical conclusiveness of the verdict while relieving against the occasional irrationality exhibited by juries' findings. The test, we may take it, now with us is whether the verdict was such as reasonable men ought not to have given (see *Soloman* v. *Bitton*, qualified in *Webster* v. *Friedberg*, and explained in *Metropolitan Railway* v. *Wright*). This means, or seems to mean, that the Court assumes a right to be the arbiter of what is and what is not rational. Canadian law and American law are more strict, it would seem, in upholding the conclusiveness of a verdict (*Fraser* v. *Drew*, 30 Rep. Sup. Court of Canada, 241). In that case a deed of assignment by a debtor was challenged as fraudulent, and the judge who tried the case commented in his report on the conduct of the jury thus: "I concluded that all my efforts, as well as those of counsel, to get them to understand the case intelligently had been wasted, and that it was useless to say anything further to them." The jury, however, found fraud, and the Supreme Court refused a new trial on the ground that the question had been left to, and dealt with by, the jury in such a manner that it could not interfere with their findings. The Court, in other words, disclaims any pretension to measure the intelligence of the jury. It is enough that the jury has exercised its judgment as a jury on the evidence before it. This fundamental principle is obscured in our English decisions, where rationality is made the test. Rationality is no doubt relevant, but only for the purpose of determining whether the jury were really exercising their functions properly as a jury.

Schoolmasters' Liabilities in France.—A law has recently been passed in France making schoolmasters (*instituteurs*) answerable for damage done by their pupils while under their care. This responsibility, so declared by the French law, is based on a presumption of blame resulting from want of foresight or supervision. There is no occasion for the victim of the wrong to prove fault on the schoolmaster's part; on the contrary, it is for the schoolmaster to disengage himself from his *primâ facie* liability by proving that he could not prevent the act. This is an onerous obligation, and it is not to be wondered at that the new legislation should have evoked some protest among French *instituteurs*. Public schoolmasters in particular argue that they have no choice in the matter of pupils or of assistant masters, and they think the responsibility in their case ought to be shifted on to the State. Certainly the new article opens up an interesting vista of possibilities, because, besides what may be called the external schoolboy delinquencies, there are the internal, or *inter se*, delinquencies—damage to clothes, insulting language or sobriquets, the black-eye or other forms of common assault—"les élèves blessés par leurs camarades," as a French critic puts it. Now that the schoolmaster is civilly answerable for such breaches of the peace as these, what may we not expect

the French school to become? But in the meanwhile the *élèves* are likely to have rather a bad time of it—a regime of Rhadamanthine discipline; for the schoolmaster in France is now put, in fact, on the same footing as the keeper of a bull or bear. We in England are not quite sure whether the schoolboy ought to be classed among animals *feræ naturæ* or *mansuetæ naturæ*. At present he may be said to be a chartered libertine, for whose misdemeanours neither his parents nor his schoolmasters are answerable.

Indecent Publications.—This is an unpleasant subject, but it is one which modern civilisation—whose dangers are rather from within than from without—has to face. Cheap printing, the rapid growth of pictorial art, the multiplication of juvenile readers, and the profitableness of the "abominable thing" have all helped to stimulate the supply; and its purveyors are unfortunately persons on whom nothing but the rigours of the law exercise a restraining influence. Unfortunately, too, not a little of the corrupting traffic profanes the name of Art, and shelters itself under the sophistry of "Art for Art's sake." New South Wales has just passed a very drastic measure dealing with the evil in some of its commonest forms, such as advertisements of a certain kind, affixing indecent pictures or printed matter on walls, hoardings, trees, etc., throwing them down areas, or transmitting them through the post. In the last case the Act empowers any postmaster receiving a suspicious packet to forward it to the Postmaster-General, who may cause it to be opened and, if offensive, destroyed. The subject affords a good instance of the mixed truth and untruth involved in the commonplace that "men cannot be made virtuous by Act of Parliament." The law, it is true, cannot make Galahads or inspire virtuous dispositions, though *honeste vivere* is one of its maxims; but the law can create an environment favourable to virtue, inimical to vice, and such an environment moulds men insensibly,—they take their colour from it just as the Arctic fox or bear does from its surroundings. By living—even constrainedly—virtuous lives we attain by degrees, through the discipline of habit, the true moral state—the ἠθικὴ ἕξις of Aristotle.

Chinese Criminal Law.—Several books have lately been published with reference to Chinese law. Mr. Johnston, in his volume *China and Its Future*, thus describes the Criminal Code of China: It is "a model of justice, simplicity, and common sense. . . . Almost the only thing one objects to in it is the too liberal use of the bamboo as the means of punishment; but the Chinese prefer it to imprisonment. Compared with the Gentoo Code of the Hindu, it is as light to darkness. . . . It is written in a style so clear and simple that it can be understood by the humblest of the people, if they can read at all, and can be bought for a few pence." Mr. Ernest Alabaster, in his recently published *Notes and Commentaries on Chinese Criminal Law*, views it with "considerable admiration." But he has much to criticise in it: for example, the system of responsibility underlying the whole system—the head of a family being responsible, in a measure, for the crimes of its members,

the head of a clan for those of his clansmen. This leads to abuses, and, in particular, to quashing prosecutions and to winking at personations. Very remarkable is the highly complex and developed law as to suicide, the law significantly providing for a variety of circumstances almost unknown in Western countries, and entering into nice and even grotesque distinctions. Here are some curious provisions: "Looking on at a suicide renders the onlooker to some extent liable; penalty, transportation for life to three thousand *li* distant. . . . To aid a parent to commit suicide is punishable with the lingering death; but if the junior was not present at the suicide, and he took a passive position, saying, when his parents announced their intention, that he would avenge them, the penalty will be merely (*sic*) instant decapitation." Persons who have caused a suicide, no matter how remote their influence, are punishable. A. went to the house of B., suspected of being a thief, and scared B.'s wife by threatening that the family would be held responsible for the theft. B.'s wife went and hanged her children and herself. A. was sentenced to decapitation. A. utters slanders gravely affecting the honour of a lady, who, in consequence, kills herself. The slanderer will be subject to strangulation.

Russia and the Deportation of Criminals: Progress in Penology.—Mr. S. J. Burrows, writing in the *Forum*, says: "The close of the century is signalised by a notable step taken by Russia in abolishing deportation as a part of her penal system, with the exception of a small penal colony for political and habitual offenders. This is a step long contemplated by Russia, and now determined upon after the most positive evidence of the evils of deportation to Siberia. Russia is about to make provision in prisons for fourteen thousand more prisoners; and she has appropriated 3,520,000 dollars for the new buildings, which must be erected for the eight thousand who cannot be accommodated in existing prisons. This new step by Russia marks the practical abandonment of transportation by all civilised countries, with the exception of France, which still supports penal colonies; but the latter are secondary features of the French system." Continuing, the writer says: "If asked to sum up in a paragraph the most important indications of progress in penology, the representatives of different schools would undoubtedly differ; but speaking as a student of tendencies, principles, and results, and not as the exponent of a school, I should say that progress in the century just closed is evident in the following points:—

(1) The higher standard of prison construction and administration;
(2) The improved *personnel* in prison management;
(3) The recognition of labour as a disciplinary and reformatory agent;
(4) The substitution of productive for unproductive labour, and to a small degree requited for unrequited labour;
(5) An improvement in prison dietaries;
(6) New and better principles of classification;
(7) The substitution of a reformatory for a retributory system;
(8) Probation, or conditional release for first offenders, with friendly surveillance;

(9) The parole system of conditional liberation, found in its best form in the indeterminate sentence as an adjunct of a reformatory system and as a means for the protection of society;
(10) The Bertillon system for the identification of prisoners;
(11) The new attention given to the study of the criminal, his environment and history;
(12) The separation of accidental from habitual criminals;
(13) The abandonment of transportation;
(14) The humane treatment of the criminal insane, the improvement in criminal procedure, more effective organisation in relief and protective work and in the study of penological problems; and
(15) The new emphasis laid upon preventive, instead of punitive or merely corrective, measures."

Marriage Laws of the Empire.—With a view to collect and reduce to order information with respect to the state of the marriage laws in different parts of the Empire, Mr. De Hart has prepared the following series of questions, the answers to which would greatly help him in presenting a clear survey of the whole subject:—

1. What is the nature of the marriage law of the Colony—*e.g.* canon or other ecclesiastical law, statute law, code specifying; the statutes, or articles of codes, in which the law is contained?
2. At what age can a person contract a valid marriage?
3. When is the consent of third parties necessary? who are the parties whose consent is required? and what effect has the want of consent required by law on the validity of a marriage?
4. Do any mental or physical defects affect the validity of a marriage, and in what way?
5. What is the effect of fraud or duress on the validity of a marriage?
6. Within what degrees of affinity or consanguinity are marriages prohibited?
7. Are any classes of persons disqualified from contracting marriage?
8. Are any non-Christian marriages recognised as valid? (By the term "Christian marriage" is meant the voluntary union for life of one man and one woman, to the exclusion of all others.)
9. What preliminary formalities are necessary, and what are the modes in which marriages may be solemnised? What is the effect of non-compliance with some formality, or of some irregularity in the solemnisation of a marriage?
10. How, and for what reasons, can a marriage be dissolved during the lives of the contracting parties?
11. Can divorced persons contract a second marriage?
12. Are illegitimate children made legitimate by the subsequent marriage of their parents, or in any other way?

Correspondents answering some of these questions will be aiding in a useful and much needed work.

Primitive Justice in Afghanistan.—In the recently published life of Abdur Rahman, Amir of Afghanistan, is a passage in which the Amir describes the changes which he has, during his reign, made in the Courts of

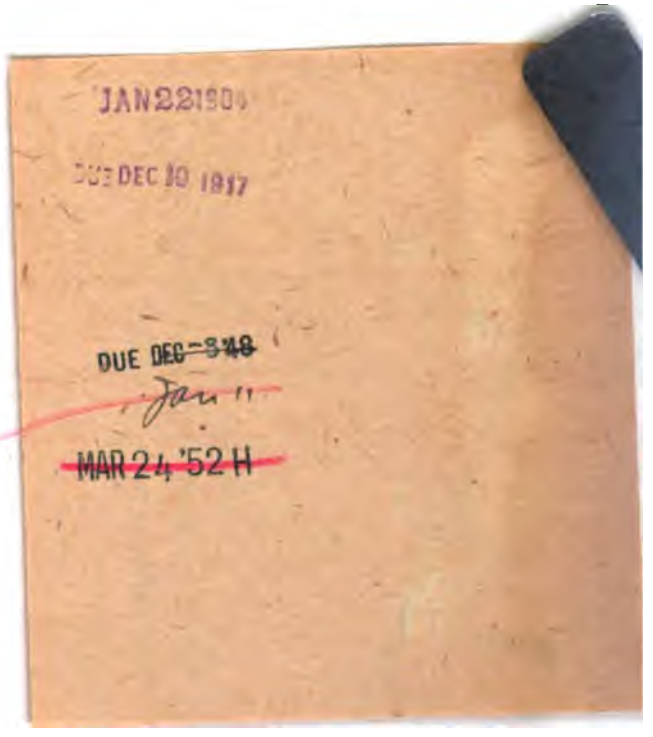
Justice of the country. The old procedure was short and simple. "All was over in a few minutes, for the plaintiff, the defendant, and all the witnesses were brought before the judge, who, when he had heard both sides of the question personally, without having them written down, passed judgment on them on the spot, and then the next case was called in"—a description not unlike that of the oldest known Courts of Justice. The Amir is strongly in favour of a much greater use of written procedure. It is curious to note that his description of the old procedure, which he is abolishing, is not unlike that by Bentham of the ideal procedure, the Amir's notion of the improved procedure not unlike Bentham's notion of the worst.

A Chief Justice of Ancient Egypt.—Mr. Percy Newberry, the well-known Egyptologist, has lately restored from the hieroglyphics of his tomb an interesting figure—that of Rekhamara, Chief Justice, or in Oriental hypallage, the "Gate of Justice," of Upper Egypt and Governor of Thebes under Thothmes III., *circa* 1471–1445 B.C. If we may believe the statements concerning the virtues of Rekhamara, he possessed all the good qualities of an upright and honest judge. He "did not lean to one side more than another, nor weigh the truth for exchange," and never accepted a bribe. He was patient with witnesses, "keen in deliberating," and "not passionate." He was learned in the law, "carried the law of the king in his hand," and always discerned clearly what was to be done. With those who offended against the law through ignorance he merely remonstrated, but wilful wrongdoers he imprisoned. He tells us that he kept a careful eye upon the dictates of his conscience, and set up truth as his guiding star. In order that the poor and oppressed might have free access to him, it was his custom to walk abroad in the early morning, accompanied only by a few servants and scribes, so that he might listen to their grievances. No one who so approached him was repulsed, and there were no tearful eyes among his petitioners: "I judged the weak," he says, "with the strong. I protected those who were weak, and I punished the evil-doers and violent persons. I encouraged the tearful and helpless. I supported the widow without a husband, and established the son in the inheritance of his father." It was not a fancy justice either that Rekhamara administered. The king, for instance, in installing the Chief Justice, instructs him to act strictly according to law, and in one of the scenes depicted on the tomb there are spread in front of the Chief Justice, upon four mats with fringed edges, the forty parchment rolls containing the Books of the Law. How he got through his multitudinous duties as Chief Justice, High Priest, Prime Minister, Chancellor of the Exchequer, and President of the Board of Trade and Public Works must remain a mystery; but it is satisfactory to know that he found time now and then to go hunting in the desert with huntsmen and hounds, or to take his wife and children out in a canoe to the swamps and amuse himself by harpooning great fish and hippopotamuses.

INDEX OF SUBJECT-MATTER IN VOL. II. (1900), NEW SERIES.

INDEX TO CONTRIBUTORS.

Printed by Hazell, Watson, & Viney, Ld., London and Aylesbury.


JAN 22 1904
DUE DEC 10 1917
DUE DEC -8 '48
Jan 11
MAR 24 '52 H